

§ 1610.2 Repeated attorney misconduct, sanctions, hearings.

(a) If an attorney who has been sanctioned by the Board for disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of a deposition under § 1610.1(a)(5) is sanctioned again by the Board in a subsequent deposition or investigation, the Board, after offering the attorney an opportunity to be heard, may reprimand, censure the attorney, or suspend the attorney from further practice before the Board for such period of time as the Board deems advisable.

(b) A reprimand or a censure shall be ordered with grounds stated on the record of the proceeding. A suspension shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal.

(c) An attorney suspended pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Board. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. If necessary for a full and fair consideration of the facts, the Board as a whole may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. Such presiding officer may be an attorney who is a Member of the Board or is employed in the Office of General Counsel, or an administrative law judge detailed from another agency pursuant to 5 U.S.C. 3344. If the Board refers the matter to a presiding officer, unless the Board provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. If no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Board, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Board.

§ 1610.3 Sequestration of witnesses and exclusion of Counsel.

(a) All witnesses compelled by subpoena to submit to CSB depositions shall be sequestered unless the official conducting the depositions permits otherwise.

(b) Any witness compelled by subpoena to appear at a deposition during a CSB investigation may be accompanied, represented, and advised by an attorney in good standing of his or her choice, pursuant to § 1610.1. However, when the CSB official conducting the investigation determines, after consultation with the Office of General Counsel, that the CSB has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the CSB official may prohibit that counsel from being present during the deposition.

(c) The deposing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section, and the witness' counsel, a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena with the Board within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Board. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Board's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the deposition may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The deposition may also be rescheduled to a subsequent date established by the CSB, although the deposition shall not be rescheduled by the CSB to a date that precedes the expiration of the time provided in paragraph (d) of this section for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

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CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**40 CFR Parts 1611 and 1612****Testimony of Employees and Production of Records in Legal Proceedings**

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This regulation establishes internal policies and procedures governing when and to what extent employees of the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") may appear as witnesses in third-party litigation or produce CSB records in third-party litigation. The intended effect of this regulation is to conserve the CSB's ability to conduct official business, preserve its employee resources, minimize involvement in matters unrelated to its mission and programs, preserve its impartiality, avoid spending public time and money for private purposes, and to help avoid needless litigation.

DATES: This rule is effective March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, (202) 261-7600.

SUPPLEMENTARY INFORMATION: Based on the experience of other Federal agencies, there is a strong potential that CSB employees will be requested or subpoenaed to provide testimony or produce records in litigation. CSB regulations have not heretofore clearly specified when its employees are required to respond to subpoenas or produce CSB records. This has resulted in the potential of an employee giving testimony or providing records, which diverts such employee from performing his/her duties, and might create the appearance that the CSB is taking sides in private litigation. This regulation is intended to address this situation by generally prohibiting both voluntary appearances and compliance with subpoenas unless authorized by the CSB.

The need for this regulation is even more acute at the CSB, because pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report. The legislative history of this provision explains why Congress included it:

The findings, conclusions and recommendations of the Board are not to be

used in civil proceedings for damages which result from an accident investigated by the Board. In conducting its investigations, the Board will need the fullest cooperation from facility owners and operators, equipment suppliers and other parties involved in an accidental release to determine the probable causes of the event. The likelihood that conclusions drawn from information provided to the Board will be used in a suit from damages will discourage full cooperation. Furthermore, and as noted above, the standard of evidence used by the Board in reaching its determinations of probable cause is likely to be less rigorous than evidentiary standards used in a civil proceeding and thus a conclusion, finding or recommendation of the Board should not be given the same weight as other evidence in such a proceeding.

Senate Report 101-228, Clean Air Act Amendments 1990.

Identical language in the National Transportation Safety Board's statute (section 304(c) of the Independent Safety Board Act of 1974) was premised on Congress' "strong * * * desire to keep the Board free of the entanglement of such suits." Rep. No. 93-1192, 93d Cong., 2d Sess., 44 (1974).

The courts have made clear that subpoenas to testify concerning information which U.S. government employees have acquired in the course of performing official duties, or to produce records, are essentially legal actions against the United States for which there has been no waiver of sovereign immunity. Concomitantly, the courts have recognized the authority of Federal agencies to limit compliance with such subpoenas. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). See also *United States v. Williams*, 170 F.3d 431 (4th Cir. 1999); *Smith v. Cromer*, 159 F.3d 875 (4th Cir. 1998); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194 (11th Cir. 1991); *Davis Enterprises v. E.P.A.*, 877 F.2d 1181 (3rd Cir. 1989); *Boron Oil Company v. Downie*, 873 F.2d 67 (4th Cir. 1989); *Swett versus Schenk*, 792 F.2d 1447 (9th Cir. 1986).

Moreover, subpoenas by State, territorial or Tribal courts, and legislative or administrative bodies, which attempt to assert jurisdiction over Federal agencies and their employees, are inconsistent with the Supremacy Clause of the U.S. Constitution. A Federal regulation, such as this one prohibiting compliance with such subpoenas, is consistent with the Supremacy Clause. See *McCulloch v. Maryland*, 7 U.S. (4 Wheat.) 316 (1819); *Houston Business Journal, Inc. v. Office of the Comptroller of the Currency*, 86 F.3d 1208 (D.C. Cir. 1996); *Giza v. Secretary of HEW*, 628 F.2d 748 (1st Cir. 1980); *United States v. McLeod*, 385

F.2d 734 (5th Cir. 1967). Accordingly, this regulation restricts a CSB employee from complying with subpoenas from State, territorial or Tribal courts, and legislative or administrative bodies without the approval of the General Counsel of the CSB.

In addition, this regulation describes procedures by which the CSB will make its employees and records available in response to subpoenas in Federal court civil proceedings in which the United States is not a party. In the event that the CSB or its Office of General Counsel fails to reach an agreement regarding the proper scope of a subpoena, the Office of General Counsel will coordinate with the Department of Justice to file appropriate motions, including motions to quash or for a protective order.

This regulation does not apply to congressional proceedings. This regulation also does not apply to Federal court civil proceedings in which the United States is a party, because the Department of Justice is already representing the CSB's interests and may file appropriate protective motions under the Federal Rules of Civil Procedure. This regulation likewise does not apply to either Freedom of Information Act or Privacy Act requests.

This regulation applies to information which CSB employees acquire in the course of performing official duties, to production of records in CSB files, and to testimony concerning such records. It is recognized that employees may, on their own time or while in an approved leave status, appear as private citizens in proceedings in which CSB policies and programs are not at issue. This regulation does not restrict such activities.

Finally, the CSB is sometimes asked to authenticate copies of official records for purposes of admissibility under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44, or comparable State or Tribal law. Since official actions and policies can best be proved by CSB records, and since this regulation provides that it is generally inappropriate for employees to appear as witnesses to discuss the background of CSB policies and action in private litigation, this regulation provides that the CSB will authenticate copies of CSB records upon request.

Because this regulation establishes internal policy for CSB employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. 5 U.S.C. 553(a)(2). This regulation provides immediate clarifying guidance on how CSB employee testimony and CSB records may be obtained. As such, the CSB finds

that good cause exists for making the regulation effective immediately upon publication. 5 U.S.C. 553(b)(3)(B).

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of \$100 million or more on the economy. This regulation regulates how and when CSB employees and documents may be provided in certain situations. As such, it will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by adopting it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation merely regulates how and when CSB employees may testify and that documents may be provided in certain situations.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when CSB employees may testify and that CSB documents may be provided in certain situations, this regulation:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when CSB employees may testify and that CSB documents may be provided in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The CSB has determined that this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's Supremacy Clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objectives of 5 U.S.C. 301, pursuant to which this regulation is promulgated.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the CSB has determined that this regulation does not unduly burden the judicial system, under *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

National Environmental Policy Act (NEPA)

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

Dated: March 21, 2001.

Christopher W. Warner,
General Counsel.

List of Subjects

40 CFR Part 1611

Administrative practice and procedure, Freedom of information, Government employees, Investigations, Testimony of employees.

40 CFR Part 1612

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board adds a new 40 CFR part 1611 and part 1612 as follows:

PART 1611—TESTIMONY BY EMPLOYEES IN LEGAL PROCEEDINGS

Sec.

- 1611.1 General.
- 1611.2 Definitions.
- 1611.3 Scope of permissible testimony.
- 1611.4 Manner in which testimony is given in civil litigation.
- 1611.5 Request for testimony in civil litigation.
- 1611.6 Testimony of former CSB employees.
- 1611.7 Testimony by current CSB employees regarding prior activity.
- 1611.8 Procedure in the event of a subpoena in civil litigation.
- 1611.9 Testimony in Federal, State, or local criminal investigations and other proceedings.
- 1611.10 Obtaining CSB investigation reports and supporting information.

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

§ 1611.1 General.

(a) This part prescribes policies and procedures regarding the testimony of employees of the Chemical Safety and Hazard Investigation Board (CSB) in suits or actions for damages and criminal proceedings arising out of chemical incidents when such testimony is in an official capacity and arises out of or is related to an incident investigation. The purpose of this part is to ensure that the time of CSB employees is used only for official purposes, to avoid embroiling the CSB in controversial issues that are not related to its duties, to avoid spending public funds for non-CSB purposes, to preserve the impartiality of the CSB, and to prohibit the discovery of opinion testimony.

(b) This part does not apply to:

- (1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the CSB. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the CSB.

(c) This part only provides guidance for the internal operations of the CSB, and neither creates nor is intended to create any enforceable right or benefit against the United States.

§ 1611.2 Definitions.

CSB incident report means the report containing the CSB's determinations, including the probable cause of an incident, issued either as a narrative report or in a computer format. Pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

§ 1611.3 Scope of permissible testimony.

(a) The statute creating the CSB, 42 U.S.C. 7412(r)(6)(G), precludes the use or admission into evidence of CSB investigative reports in any suit or action for damages arising from such incidents. This provision would be undermined if expert opinion testimony of CSB employees, which may be reflected in the views of the CSB expressed in its reports, were admitted in evidence or used in litigation arising out of an incident. The CSB relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of CSB employees as experts to give opinion testimony would impose a significant administrative burden on the CSB's investigative staff.

(b) For the reasons stated in paragraph (a) of this section and § 1611.1, CSB employees may only testify as to the factual information they obtained during the course of an investigation. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

(c) CSB employees may testify about the firsthand information they obtained during an investigation that is not reasonably available elsewhere, including their own factual observations. Consistent with the principles cited in § 1611.1 and this

section, current CSB employees are not authorized to testify regarding other employee's observations or reports, or other types of CSB documents, including but not limited to safety recommendations, safety studies, safety proposals, safety accomplishments, reports labeled studies, and analysis reports, as they contain staff analysis and/or CSB conclusions.

(d) Consistent with 42 U.S.C. 7412(r)(6)(G), a CSB employee may not use the CSB's investigation report for any purpose during his testimony.

(e) No employee may testify in any matter absent advance approval by the General Counsel as provided in this part.

§ 1611.4 Manner in which testimony is given in civil litigation.

(a) Testimony of CSB employees with unique, firsthand information may be made available for use in civil actions or civil suits for damages arising out of incidents through depositions or written interrogatories. CSB employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the CSB's headquarters in Washington, DC, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his or her duties.

(c) CSB employees are authorized to testify only once in connection with any investigation they have made of an incident. Consequently, when more than one civil lawsuit arises as a result of an incident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a CSB employee, the original of the transcript will be provided to the deponent for signature and correction, which the CSB does not waive. A copy of the transcript of the testimony and any videotape shall be furnished, at the expense of the party requesting the deposition, to the CSB's General Counsel at Washington, DC headquarters for the CSB's files.

(e) If CSB employees are required to travel to testify, under the relevant substantive and procedural laws and regulations the party requesting the testimony must pay for the costs, including travel expenses. Costs must be paid by check or money order payable

to the Chemical Safety and Hazard Investigation Board.

§ 1611.5 Request for testimony in civil litigation.

(a) A written request for testimony by deposition or interrogatories of a CSB employee relating to an incident shall be addressed to the General Counsel, who may approve or deny the request consistent with this part. Such request shall set forth the title of the civil case, the court, the date and place of the incident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) Where testimony is sought in connection with civil litigation, the General Counsel shall not approve it until the CSB's investigation report is issued.

(c) The General Counsel shall attach to the approval of any deposition such reasonable conditions as may be deemed appropriate in order that the testimony will be consistent with § 1611.1, will be limited to the matters delineated in § 1611.3, will not interfere with the performance of the duties of the employee as set forth in § 1611.4, and will otherwise conform to the policies of this part.

(d) A subpoena shall not be served upon a CSB employee in connection with the taking of a deposition in civil litigation.

§ 1611.6 Testimony of former CSB employees.

It is not necessary to request CSB approval for testimony of a former CSB employee, nor is such testimony limited to depositions. However, the scope of permissible testimony continues to be constrained by all the limitations set forth in § 1611.3 and § 1611.4.

§ 1611.7 Testimony by current CSB employees regarding prior activity.

Any testimony regarding any incident within the CSB's jurisdiction, or any expert testimony arising from employment prior to CSB service is prohibited absent approval by the General Counsel. Approval shall only be given if testimony will not violate § 1611.1 and § 1611.3, and is subject to whatever conditions the General Counsel finds necessary to promote the purposes of this part as set forth in § 1611.1 and § 1611.3.

§ 1611.8 Procedure in the event of a subpoena in civil litigation.

(a) If the CSB employee has received a subpoena to appear and testify in connection with civil litigation, a request for his deposition shall not be

approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide all information requested by the General Counsel.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

§ 1611.9 Testimony in Federal, State, or local criminal investigations and other proceedings.

(a) As with civil litigation, the CSB prefers that testimony be taken by deposition if court rules permit, and that testimony await the issuance of the investigation report. The CSB recognizes, however, that in the case of coroner's inquests and grand jury proceedings this may not be possible. The CSB encourages those seeking testimony of CSB employees to contact the General Counsel as soon as such testimony is being considered. Whenever the intent to seek such testimony is communicated to the employee, he shall immediately notify the General Counsel.

(b) In any case, CSB employees are prohibited from testifying in any civil, criminal, or other matter, either in person or by deposition or interrogatories, absent advance approval of the General Counsel.

(c) If permission to testify by deposition or in person is granted, testimony shall be limited as set forth in § 1611.3. Only factual testimony is authorized; no expert or opinion testimony shall be given.

§ 1611.10 Obtaining CSB investigation reports and supporting information.

It is the responsibility of the individual requesting testimony to obtain desired documents. There are a number of ways to obtain CSB investigation reports, and accompanying investigation docket files. The rules at part 1612 of this chapter explain CSB procedures for production of records in legal proceedings, and the CSB's Freedom of Information Act rules at part 1601 of this chapter explain CSB procedures for producing documents more generally. See also the information available on the CSB web site, at www.csb.gov. You may also call the CSB Office of General Counsel, at (202) 261-7600. Documents will not be supplied by witnesses at depositions, nor will copying services be provided by deponents.

PART 1612—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

- 1612.1 Purpose and scope.
- 1612.2 Applicability.
- 1612.3 Published reports and material contained in the public incident investigation dockets.
- 1612.4 Requests for authentication or certification of records.
- 1612.5 Other material.

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

§ 1612.1 Purpose and scope.

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the Chemical Safety and Hazard Investigation Board (CSB) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) for such material by a court or other competent authority or by a private litigant. *Material*, as used in this part, means any type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

- (1) Conserve the time of employees for conducting official business;
- (2) Minimize the possibility of involving the CSB in controversial issues not related to its mission;
- (3) Maintain the impartiality of the CSB among private litigants;
- (4) Avoid spending the time and money of the United States for private purposes; and
- (5) To protect confidential, sensitive information, and the deliberative processes of the CSB.

§ 1612.2 Applicability.

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in CSB files; and any information or material acquired by an employee of the CSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at part 1611 of this chapter. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.

§ 1612.3 Published reports and material contained in the public incident investigation dockets.

(a) Demands for published investigation reports should be directed to the Office of Congressional and Public Affairs, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. Demands for material contained in the CSB's official public docket files of its incident investigations shall be submitted, in writing, to CSB Records Officer, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. For information regarding the types of documents routinely issued by the CSB, see part 1601 of this chapter.

(b) No subpoena shall be issued to obtain materials subject to this section, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

§ 1612.4 Requests for authentication or certification of records.

The CSB may authenticate or certify records to facilitate their use as evidence. Requests for certified copies should be made to the General Counsel at least 30 days before the date they will be needed. The CSB may charge a certification fee of \$5.00 per document.

§ 1612.5 Other material.

(a) *Production prohibited unless approved.* Except in the case of the material referenced in § 1612.3, no employee or former employee of the CSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the CSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this section.*

(1) All demands for material shall be submitted to the General Counsel at CSB headquarters, 2175 K Street, NW., Suite 400, Washington, DC 20037. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to the proceeding, and containing a certification, with support, that the

information is not available from other sources, including CSB materials described in § 1612.3 and part 1601 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the CSB and/or the United States.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02; I.D. 082900C]

RIN 0648-AN85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2000-2001 Catch Specifications for Gulf Group King Mackerel

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this final rule, applicable to the fishery for Gulf group king mackerel, to reduce the annual total allowable catch (TAC), reinstate a 2-fish per person daily bag limit for captain and crew of for-hire vessels (charter vessels and headboats), and revise the commercial trip limit applicable within the Florida east coast subzone (Miami-Dade County, FL through Volusia County, FL) to increase its flexibility. The intended effect of this final rule is to protect the Gulf group king mackerel stock from overfishing while still