depreciation is considered in settling a claim for lost or damaged property.

§ 801.4 Final disposition of claim.

(a) *What if you accept the settlement offer?* If you accept a settlement offer, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(b) *What if your claim is denied?* (1) If your claim is denied, you have 30 days from the date of CSOSA/PSA's written notification to make a written request that the agency reconsider the denial.

(2) If your claim is denied or you reject the settlement offer, you have 6 months from the date of mailing of CSOSA/PSA's notice of denial to file a civil action in the appropriate U.S. District Court.

(c) *What if you do not hear from CSOSA/PSA within 6 months of the filing date?* If you do not hear from CSOSA/PSA within 6 months of the filing date for the claim, you may consider your claim denied. You may then proceed with filing a civil action in the appropriate U.S. District Court.

[FR Doc. 01–28944 Filed 11–19–01; 8:45 am]

BILLING CODE 3129–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–7104–9]

Nonroad Diesel Emissions Standards Staff Technical Paper

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Staff Technical Paper.

SUMMARY: When we set the Tier 3 emission standards in 1998, available information indicated that the cooled exhaust gas recirculation (EGR) technology developed for highway diesel engines would be the primary means of compliance with these standards. In conducting our technology review, we have surveyed the recent engineering and scientific literature on advances in diesel emissions control. We have also reviewed information provided by engine manufacturers in support of our 2004 highway standards program, showing the considerable progress they have made in the design of robust EGR systems for use in highway engines. In addition, we have gathered information from engine manufacturers on their design plans for Tier 3 and their testing and development experience with control technologies they are likely to employ. This information shows that cooled EGR is but one of several technologies available to diesel engine manufacturers to meet the Tier 3 emission standards. This widening of technology options comes from the progress of development since 1998, but is also due to the fact that the 1998 final rule envisioned a Tier 3 program more closely aligned with future highway standards, in particular including comparable control of particulate matter (PM), rather than the less demanding set of Tier 3 standards that were actually adopted at the time, and that are the subject of this feasibility assessment. Based on the information we have gathered, we believe that the Tier 3 standards in the regulations on control of emissions from new and in-use nonroad compression-ignition engines are feasible in the timeframe established in the rule. We also believe that the Tier 2 standards for engines under 50 horsepower are likewise feasible, based on certification test data from Tier 1 engines in this power range showing that many of these engines are already meeting the Tier 2 standards. Additionally we stated that as a part of the 2001 Technology Review process, PM standards would be addressed. Given the need for further PM reductions, those will be addressed in a subsequent regulatory action.

DATES: EPA is requesting public review and comment on the Staff Technical Paper on or before January 4, 2002.

ADDRESSES: You may send written comments (in duplicate if possible) to Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105. The Staff Technical Paper and supporting documents are available in the public docket A–2001–28. The docket is located at U.S. Environmental Protection Agency, 401 M St., SW, Room 1500, Washington, DC 20460 (on the ground floor in Waterside Mall) and is open from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the docket office by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; E-mail: *borushko.margaret@epa.gov.* EPA comments hotline: 734–214–4370.

SUPPLEMENTARY INFORMATION: The Nonroad Diesel Emissions Standards Staff Technical Paper is available at the url: *http://www.epa.gov/otaq/equip-hd.htm* starting October 30, 2001. This serves as the Notice of Availability. The document discusses nonroad diesel engine technology for heavy duty applications, as well as the under 37 kW (50 hp) nonroad diesel engines within the context of the 2001 Nonroad Diesel Technology Review.

Readers should also note a new telephone number that will serve as a hotline for updated information related to the public comment period. People should call 734–214–4370.

Access to Technical Documents Through the Internet

Today's action is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this technical staff paper and other documents associated with today's action are available from the EPA Office of Transportation and Air Quality Web site listed below. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (Either select a desired date or use the Search feature.)

Nonroad Diesel home page: *http://www.epa.gov/otaq/equip-hd.htm*

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–28856 Filed 11–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL–7105–7]

RIN 2050 AE77

Supplemental Proposal to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In today's action, the Agency is proposing a regulatory change suggested by commenters on the Environmental Protection Agency's (EPA's) proposed ''Amendments to the Corrective Action Management Unit Rule'' (August 22, 2000). In that notice, EPA proposed amendments to the corrective action management unit (CAMU) regulations to tighten standards for wastes managed in CAMUs during cleanup. The comment period on the August 2000 proposal closed on October 23, 2000. EPA is now proposing additional regulations that would allow CAMU-eligible hazardous waste, treated in accordance with the treatment standard in the proposed CAMU amendment in lieu of otherwise applicable land disposal restriction standards, to be placed in hazardous waste landfills, under limited circumstances. We believe that allowing hazardous remediation waste generated during clean-up to be placed in hazardous waste landfills will promote more aggressive remediation.

In this document, EPA is soliciting comment only on the issue of placement of CAMU-eligible wastes in hazardous waste landfills under the terms of today's supplemental proposal; we are not requesting comment on any aspect of the August 2000 proposal. If EPA goes forward with today's proposal, it intends to do so when it takes final action on the August 2000 proposal.

DATES: EPA will accept public comment until December 5, 2001.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–2001–AC2P–FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA)(5305G), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC, 20460. Hand deliveries of comments, including courier, postal and non-postal express deliveries, should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–2001–AC2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue N.W., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Proposed Rule is also available electronically. See the **SUPPLEMENTARY INFORMATION** section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Bill Schoenborn, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8483, or e-mail: schoenborn.william@epa.gov.

SUPPLEMENTARY INFORMATION: In developing this document, we tried to address the concerns of all our stakeholders. Your comments will help us improve this proposed regulatory action. We invite you to provide views on options we propose, new approaches we have not considered, new data, information on how this regulatory action may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of this proposal you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Reference your comments to specific sections of this notice.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the proposal name, date, and docket number with your comments.

Copies of today's proposal, titled Supplemental Proposal to the Corrective Action Management Unit Rule (EPA publication number [Insert]), are available for review and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu*. Printed copies of the final rule and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. We may, however seek clarification of electronic comments that become garbled in transmission or during conversion to paper form.

Outline

The contents of today's document are listed in the following outline:

I. Authority
II. Summary of Today's Proposal
III. Background and General Proposal Requirements
IV. Section-by-Section Discussion
  A. Conditions for Off-Site Placement
  B. Approval Procedures
  C. Other Requirements
V. How Would Today's Proposed Regulatory Changes be Administered and Enforced in the States?
VI. Effective Date
VII. Analytical and Regulatory Requirements
  A. Planning and Regulatory Review (Executive Order 12866)
  B. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act
  E. National Technology Transfer and Advancement Act of 1995
  F. Consultation and Coordination with Indian and Tribal Governments (Executive Order 13175)
  G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

H. Federalism (Executive Order 13132)
I. Environmental Justice Strategy (Executive Order 12898)
J. Energy Effects (Executive Order 13211)

I. Authority

These regulations are proposed under the authority of §§ 1006, 2002(a), 3004, 3005, 3007, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Summary of Today's Proposal

EPA is proposing additional regulations that would allow CAMU-eligible hazardous wastes to be placed in hazardous waste landfills under limited circumstances. Under today's proposal, principal hazardous constituents in the waste would have to be treated to the same (or in some cases higher) standards than would hazardous wastes going to CAMUs at a remediation site. The receiving hazardous waste landfill would be required to meet the Resource Conservation and Recovery Act (RCRA) minimum technology requirements for new landfills and to have a RCRA permit; and the public at the location of the landfill would have an opportunity to comment on disposal of the waste at that landfill.

Today's proposal assumes that readers are familiar with EPA's August 22, 2000 proposal to amend the CAMU regulations (65 FR 51080). Readers who are unfamiliar with that proposal should refer to it to help them better understand both the context of today's proposal and the specific concepts discussed today.

III. Background and General Proposal Requirements

On August 22, 2000, EPA issued a proposal to amend the Resource Conservation and Recovery Act (RCRA) Corrective Action Management Unit (CAMU) regulations (65 FR 51080). The CAMU regulations (originally promulgated in February 1993) establish flexible standards for the on-site management of hazardous remediation waste during cleanups. Under the 1993 regulations, primarily found at 40 CFR 264.552, management of hazardous remediation wastes (including soil and debris) in CAMUs does not trigger the RCRA land disposal restrictions (LDRs) or RCRA's minimum technological requirements. Instead, management standards are set by the Regional Administrator on a site-specific basis, generally as part of the overall remedy selection process. EPA proposed to amend these regulations in August 2000. The proposed revisions would tighten the current CAMU requirements by establishing minimum design standards for CAMUs and minimum treatment requirements for hazardous remediation wastes placed in CAMUs.

The CAMU rule currently limits wastes that might be placed in CAMUs to those found on or originating from the facility where the cleanup occurred. See 40 CFR 260.10 (definition of corrective action management unit) and § 264.552(a). Under the current rule, CAMUs must be located on that facility, and may not receive remediation wastes from other locations. Hazardous remediation wastes sent to other locations generally must be managed in accordance with full RCRA Subtitle C standards for ''as-generated'' hazardous waste—that is, hazardous waste derived from on-going industrial processes.[1] EPA's proposed revisions to the CAMU rule in August 2000 did not address the issue of CAMU-eligible wastes shipped off-site.[2]

Although EPA did not seek comment on off-site issues in the CAMU-amendment proposal, in response to EPA's proposal, several commenters argued for off-site management of CAMU-eligible waste. One commenter—a trade association representing the waste treatment industry—offered a detailed recommendation. According to this commenter, EPA should allow off-site management of CAMU-eligible wastes if they have been treated in accordance with the proposed CAMU treatment requirements, they go to a permitted RCRA Subtitle C landfill, and the landfill has been through public participation procedures to modify its permit to accept the wastes. Another commenter argued that continuing to limit CAMU-eligible waste to management on-site would act as a disincentive to remediation. In some cases, the commenter said, redeposition of remediation waste on-site may not be the most desirable cleanup scenario (e.g., because of lack of a suitable on-site disposal facility, or of the ability to assure long-term management of such a facility on-site, or ''other economic or policy choices''). Under the right circumstances (e.g., a combination of initial concentration levels, limited process, and sufficiently protective final disposal units), the commenter argued, it may make sense to remove the material to a ''secure landfill elsewhere.'' The commenter specifically asked EPA ''to develop a way to provide the key elements of the CAMU concept in off-site applications,'' and in particular suggested allowing ''disposal of remediation waste without further treatment in an off-site facility meeting Subtitle C design requirements.''

A third commenter recommended that EPA develop a ''nation-wide LDR variance for remediation wastes disposed of in Subtitle C units.'' The commenter argued that this approach would improve the pace and quality of remediations, and that it would be attractive for sites in residential neighborhoods, or geologically sensitive areas, or where land-use potential would be improved through removal.

After the close of the public comment period on the CAMU proposal, representatives of the waste treatment industry and the waste generating industry (including the commenters who had made specific suggestions on the issue) met with EPA to present a proposal for allowing disposal of CAMU-eligible wastes in off-site Subtitle C landfills. The approach this group suggested was similar to the approach suggested earlier in comments by the waste treatment trade association, but it included greater detail. Under the group's suggested approach, CAMU-eligible wastes could be shipped off-site and placed in an off-site permitted RCRA hazardous waste landfill, if they met the proposed CAMU minimum treatment requirements (instead of the RCRA land disposal restriction treatment requirements which would otherwise apply). Use of the proposed treatment adjustment factors would generally be allowed, but, if the overseeing regulatory agency adjusted treatment levels because of the protection offered by the design of the disposal unit, the waste would have to be treated through a cost-effective technology.[3] Also, the Subtitle C landfill would have to be authorized to receive such waste after public notice, and an opportunity for a hearing. EPA has placed a copy of the industry group's

[1] EPA subsequently promulgated a treatability variance from the land disposal restrictions for remediation waste to promote more aggressive cleanups (see the ''environmentally inappropriate'' variance, § 268.44(h)(2)(ii), 62 FR 64504–64506, December 5, 1997). EPA also developed special treatment standards for soils contaminated with hazardous waste (see the Land Disposal Restrictions Phase IV rule, 63 FR 28556, May 26, 1998).

[2] In the August 2000 proposal, EPA limited wastes that could be placed in a CAMU to a subset of remediation wastes, which it identified as ''CAMU-eligible'' wastes. For more detail, see p. 51084–51088 of the August 2000 proposal and section IV.A of today's notice.

[3] Under the August 2000 proposal, treatment of principal hazardous constituents in waste placed in a CAMU might not be required, based on the protection offered by the CAMU's design, where the Regional Administrator determined that ''cost-effective treatment'' is not reasonably available (proposed § 264.552(e)(4)(E)(2)). This option would not be available under the industry recommended approach.

submission on off-site disposal of CAMU-eligible waste in the docket for today's rulemaking.

After carefully reviewing industry's suggestion, EPA believes that it has merit, and the Agency provides proposed language for comment in today's notice.

In EPA's view, expanding options for management of CAMU-eligible wastes in hazardous waste landfills (under the right conditions) will promote more aggressive remediation. See, *Louisiana Environmental Action Network* v. *USEPA*, 172 F. 3d 65, 69 (D.C. Cir. 1999) (upholding EPA LDR treatment variance regulation allowing reduction in treatment requirements where necessary to encourage aggressive remediation). For example, there will be situations where on-site redisposal of wastes will not be viable, or will not be the preferred option (e.g., where the cleanup site is located in or near a residential neighborhood); in these cases, however, the disincentives associated with off-site management of the waste under full Subtitle C would act as a disincentive to cleanup at all, or might delay cleanup or encourage less-than-optimal containment remedies. (See the preamble to the August 2000 proposal for further discussion of the disincentives created by the application of RCRA Subtitle C requirements to cleanup wastes, especially 65 FR 51082.) In other cases, the regulator, the facility owner/operator, or the local community may prefer removal of a source of contamination, but costs for off-site management in accordance with otherwise applicable LDR treatment requirements might be prohibitive. In such situations, today's proposal would provide remedial managers and facility owner/operators with an additional option, which might enhance cleanup results, and would provide equal or greater protection than an on-site CAMU.[4] EPA more generally believes that, by including an option that makes removal of all hazardous wastes from a site more feasible, this approach would allow more sites to achieve cleanup levels appropriate for reuse, including unrestricted uses. The need for long-term controls at these sites would be reduced or eliminated, and their potential for redevelopment would significantly increase. EPA believes that this result would serve both local communities and the environment well, and that it will contribute to the Agency's goal of promoting cleanup and redevelopment of the nation's brownfields.

Critics of off-site management of remediation waste, when the issue is raised in other contexts, often argue that this approach merely transfers the risk from one community to another, particularly when waste treatment standards are less than they would be for as-generated wastes. EPA understands this concern. To address it, today's proposal would require additional protection in two areas that are particularly of concern. First, the proposal would require that the landfill receiving the CAMU-eligible waste meet Subtitle C design and operation requirements for new hazardous waste landfills, rather than the proposed minimum CAMU standards, which are based on EPA's less stringent standards for municipal solid waste landfills. And second, the proposal would require treatment in all cases where the Regional Administrator adjusted treatment standards because of the protection afforded by the receiving landfill. In addition, to ensure public participation at the receiving location, the Regional Administrator would be required, under the conditions of today's proposal, to provide the local public (in the vicinity of the landfill) with an opportunity for comment on any decision to approve placement of CAMU-eligible waste in the landfill. Finally, to ensure a high level of regulatory oversight at the receiving landfill, the landfill would be required to have a RCRA hazardous waste permit (i.e., it could not be operated under interim status). Today's proposal would require a permit modification at the receiving facility, incorporating management requirements for the CAMU-eligible waste into permit conditions. The modification would have to include public notice, and opportunity for public comment and a hearing.

While today's proposal focuses primarily on placement of CAMU-eligible waste in off-site hazardous waste landfills, it would not restrict placement to off-site landfills (as the option submitted by industry would); as suggested by one commenter, the proposal would allow placement of CAMU-eligible waste in any hazardous waste landfill, including on-site landfills-as long as the placement met the conditions of today's proposal. EPA recognizes that some facilities subject to cleanup already have permitted hazardous waste landfills on-site where CAMU-eligible wastes might be safely placed. EPA sees no reason to discourage placement of CAMU-eligible wastes in these landfills, as long as the placement met the same conditions that would be required for off-site placement. EPA believes that allowing on-site placement in landfills would promote more aggressive remediation at these sites—just as it would if wastes were sent to off-site locations. This approach would also promote consolidation of cleanup wastes in protective, lined Subtitle C landfills, and in many cases might free up portions of a facility for redevelopment. For these reasons, EPA is proposing to allow placement of CAMU-eligible wastes in on-site as well as off-site hazardous waste landfills.

Today's proposed requirements would set conditions for disposal of CAMU-eligible wastes in Subtitle C landfills. EPA, however, is soliciting comment only on the specific terms of this proposal. It is not asking for comment on any aspect of the August 2000 CAMU proposal. The conditions of today's supplemental proposal are discussed below.

IV. Section-by-Section Discussion

In today's notice, EPA is proposing to add a new section, 40 CFR 264.555, to RCRA's Subtitle C regulations. This new section would allow the Regional Administrator to approve placement of CAMU-eligible wastes in permitted hazardous waste landfills, without the wastes meeting otherwise applicable land disposal restrictions of RCRA, as codified in 40 CFR Part 268. Proposed § 264.555 sets out the basic conditions of approval, described below.

A. Conditions for Landfill Placement

Proposed § 264.555(a)(1)–(3) would establish the basic conditions that must be met for the Regional Administrator to approve placement of CAMU-eligible waste in a hazardous waste landfill unit.

1. *Limitation to CAMU-Eligible Wastes.* Under proposed § 264.555(a)(1), hazardous waste placed in a hazardous waste landfill under the conditions described in today's proposal would be limited to CAMU-eligible waste, as defined in proposed § 264.552(a)(1) and (2), in EPA's August 2000 CAMU proposal—that is, only wastes eligible for placement in a CAMU in the August 2000 proposal would be eligible for placement in a hazardous waste landfill under today's proposal. Readers should refer to the August 2000 proposal for the definition of ''CAMU-eligible'' and a discussion of the term (p. 51084–51089). Generally, CAMU-eligible wastes would be limited to solid or hazardous waste,

[4] Today's proposal would require CAMU-eligible wastes to be placed in landfills meeting Subtitle C standards for new hazardous waste landfills, and the treatment requirements would be the same as, or in some cases greater than, they would be for wastes placed in CAMUs on-site. Therefore, the landfill disposal option will in most cases be more protective overall.

or environmental media and debris, managed for implementing cleanup. They do not include as-generated wastes from on-going industrial operations.[5]

In addition, the ''discretionary kickout'' of the CAMU proposal (§ 264.552(a)(2)) would also apply—that is, the Regional Administrator could deny approval for waste that had not been managed (prior to cleanup) in compliance with the land disposal treatment requirements of Part 268 Subpart D or applicable RCRA design requirements, or if non-compliance with other applicable RCRA hazardous waste requirements likely contributed to the release of the waste. EPA included these requirements in the proposed amendments to the CAMU to ensure that CAMUs do not provide an incentive to mismanage as-generated wastes, and that persons who violated RCRA requirements in significant ways would not be automatically eligible to benefit from the flexibility provided by the CAMU. The discretionary kickout is discussed in detail in the preamble to the CAMU proposal at p. 51088–9. EPA believes it is appropriate to retain the ''kickout'' here, because the incentives would work in the same way for CAMU-eligible waste (treated in accordance with today's proposed standards) disposed of in hazardous waste landfills under today's proposal as they would for remediation waste disposed of in CAMUs.

The August 2000 proposal identified certain circumstances where non-hazardous as-generated wastes might be CAMU-eligible, and it banned liquid wastes except in certain circumstances (see proposed § 264.552(a)(1)(iii) and (a)(3), p. 51087–8, 51090–1). Specifically, as-generated wastes might be allowed where they facilitated treatment or performance of the CAMU, and liquids might be allowed where they facilitated the remedy selected for the waste. EPA has not proposed to include these provisions in the definition of hazardous wastes eligible for off-site disposal under today's proposal. In the case of ''as-generated'' wastes, a special exception is unnecessary, because there is no current regulatory constraint on placement of non-hazardous as-generated wastes in RCRA permitted landfills (except of course in cases of waste incompatibility, or similar situations). As for liquids, EPA sees no reason why the current RCRA ban on liquids in landfills should not continue to apply to hazardous waste landfills receiving CAMU-eligible wastes. The circumstances EPA identified where RCRA ban on liquids might be inappropriate for CAMUs were specific to remediation (see p. 51091). Therefore, EPA is proposing not to extend the exceptions to the liquids-in-landfills ban to disposal of CAMU-eligible wastes in hazardous waste landfills.

2. *Treatment Requirements.* Proposed § 264.555(a)(2) establishes treatment requirements for CAMU-eligible wastes placed, in accordance with today's proposal, in permitted hazardous waste landfills. As explained earlier in today's notice, these requirements largely track the August 2000 proposed treatment requirements for remediation wastes placed in CAMUs (with certain key differences). EPA's August 2000 proposed CAMU standards would require treatment of ''principal hazardous constituents'' in CAMU-eligible wastes to certain specified national minimum standards, or to adjusted standards, based on any of five specific ''adjustment factors'' (see proposed § 264.552(e) in the August 2000 notice) approved by the Regional Administrator. The adjusted level would have to be protective of human health and the environment (proposed § 264.552(e)(4)(v)).

In today's proposal, treatment of CAMU-eligible wastes disposed in hazardous waste landfills would similarly be limited to principal hazardous constituents (PHCs), as identified by the Regional Administrator. For details on the definition and identification of PHCs, readers should refer to the August 2000 proposed rule language, and the preamble discussion at p. 51096–9. Briefly, PHCs are ''constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals'' at the cleanup site (see proposed § 264.552(e)(4)(i)).

Today's proposal would also use the same structure for treatment requirements—that is, it would retain the national minimum treatment standards, with an opportunity for the Regional Administrator to adjust them based on specific enumerated factors (see discussion beginning at 51095 of the August 2000 proposal, and proposed § 264.252(e)(4)). Today's proposal, however, would eliminate one adjustment factor from the August 2000 proposal (Adjustment Factor B, which considers cleanup levels or goals at the remediation site), and it would also reduce the scope of another (Adjustment Factor E(2), which in the August 2000 proposal might allow for no treatment, under limited circumstances). Today's proposal would require treatment of principal hazardous constituents under Adjustment Factor E(2) in all cases of disposal in a hazardous waste landfill. These treatment standards would apply in lieu of otherwise applicable RCRA land disposal restrictions, and adjusted standards would have to be protective of human health and the environment (proposed § 264.552(e)(4)(v)).

Under proposed § 264.555(a)(2), the treatment requirements of today's proposal could be met in three ways, described below.

First, under proposed § 264.555(a)(2)(i), PHCs in the CAMU-eligible waste could be treated to the proposed minimum national treatment standards for CAMUs in proposed § 264.552(e)(4)(iv): that is, their concentration in the waste would have to be reduced by 90%, but in any case treatment would not be required below 10 times the universal treatment standard.[6] These levels, which EPA proposed in August 2000 for wastes placed in CAMUs, are based on EPA's treatment standards for contaminated soils, promulgated in the Phase IV land disposal restrictions rule (63 FR 28556, May 26, 1998). Since these treatment levels are the current standards for contaminated soils, the level of treatment required for soils would be the same without today's proposal, except that under today's proposal treatment would only be required for principal hazardous constituents. As the August 2000 proposal does for wastes being disposed of in CAMUs, today's proposal would apply these minimum national treatment standards to principal hazardous constituents in non-soil CAMU-eligible wastes being disposed of in Subtitle C landfills; these wastes, for example, might include sludges or wastes in old landfills undergoing remediation. For a detailed discussion of the national minimum treatment standards, in the context of CAMUs, see the preamble to the August 2000 proposal (p. 51099–51101).[7]

[5] The definition of CAMU-eligible wastes includes non-hazardous solid wastes. Non-hazardous cleanup wastes, of course, would not be affected by today's proposal, because they would not need special approval under § 264.555 to be placed in a hazardous waste landfill. Similarly, non-hazardous as-generated wastes would also be unaffected. The regulation of these wastes would generally be a matter of state law.

[6] Universal treatment standards (UTS) appear in 40 CFR 268.40.

[7] Section 264.552(e)(4)(iv)(E) of the August 2000 proposal would establish special treatment standards for debris placed in CAMUs debris may be treated to the current land disposal restriction standards of ❩268.45, the national minimum standards (i.e., 90% capped by 10XUTS)s, or atreatment standards established through one of the Adjustment Factors A through E, ''whichever the regional Administrator determines is appropriate.''

Continued

Second, under proposed § 264.555(a)(2)(ii), the Regional Administrator may adjust the minimum treatment standards by applying several of the adjustment factors allowed for CAMUs in the August 2000 proposal. These are adjustment factors § 264.552(e)(4)(A), (C), (D), and (E)(1).[8] The factors are discussed in detail in the preamble to the August 2000 proposal (p. 51102–8). To summarize briefly, the basis for adjustments under these factors are: Adjustment Factor A: the technical impracticability of treatment to the national minimum levels; Adjustment Factor C: the views of the affected community (in this case, particularly, at the site of the hazardous waste landfill receiving the waste, when it is different from the cleanup site); Adjustment Factor D: the short-term risks of treatment needed to meet the national minimum standards; and Adjustment Factor E(1): the long-term protection offered by the engineering design (and related engineering controls) of the hazardous waste landfill in which the CAMU-eligible waste would be placed, when the national minimum treatment standards have been substantially met, and the PHCs in the waste are of very low mobility.

EPA believes the application of Adjustment Factors A, C, and D in the context of today's proposal would be straightforward, and they need no further explanation here (although readers are referred to relevant discussions in the August 2000 CAMU proposal at p. 51102–4.) Adjustment Factor (E)(1), however, deserves further discussion. In the CAMU proposal, EPA included Adjustment Factor E among the adjustment factors so that the Regional Administrator might take into account the design of the CAMU in determining treatment levels. EPA believed that this consideration was appropriate (in clearly defined circumstances), both to remove disincentives to more aggressive cleanup and in acknowledgment of the important role of engineering design in ensuring protective remedies. EPA believes that these same principles apply when CAMU-eligible wastes are sent to permitted hazardous waste landfills—particularly since these landfills will meet the rigorous Subtitle C hazardous waste standards for new landfills. See, *Louisiana Environmental Action Network* v *USEPA* 172 F. 3d 65, 70 (D.C. Cir. 1999) (finding that RCRA allows the Agency to consider the protective effect of the disposal unit when setting treatment requirements).

Adjustment Factor (E)(1), in the August 2000 CAMU proposal, would allow the Regional Administrator to adjust treatment levels because of the protection offered by the design of the CAMU in adjusting treatment levels, but only if PHCs ''substantially met'' the national treatment standards, and the PHCs were of ''very low mobility.'' For more discussion of these terms, see the preamble to the proposal at p. 51105–6. EPA would interpret these terms in the same way, for the purposes of today's proposal, except of course in the context of today's proposal, the Regional Administrator's analysis would be based on the environmental setting and the engineering design of the permitted hazardous waste landfill that was to receive the CAMU-eligible waste (see § 264.555(f) in today's proposed regulatory language). EPA expects that the analysis would be identical to the one anticipated for an on-site CAMU—although the unit would be designed to meet RCRA hazardous waste landfill design standards (see 65 FR 51104).

Third, proposed § 264.555(a)(2)(iii) would allow the Regional Administrator to adjust the minimum national treatment standards based on the design of the landfill[9] in accordance with proposed § 264.552(e)(4)(v)(E)(2), but with an important limitation—in all cases, treatment of PHCs would be required,[10] and that treatment would be required to significantly reduce ''the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.''

To assist the reader in understanding this proposed requirement, EPA repeats here, for context, the original language for Adjustment Factor E(2) in the August 2000 proposal:

> (E) The long-term protection offered by the engineering design of the CAMU and related engineering controls: * * *
>
> (2) Where cost-effective treatment has been used, or where, after review of the appropriate treatment technologies, the Regional Administrator determines that such treatment is not reasonably available, and:
>
> (i) The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d), or
>
> (ii) The principal hazardous constituents are of very low mobility, or
>
> (iii) Where wastes have not been treated and the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially greater protection.

(For further discussion of this proposed requirement, commenters should consult the preamble to the August 2000 proposal (p. 51106–7).) Under the proposed CAMU amendments, Adjustment Factor (E)(2) would allow a facility owner/operator, under certain circumstances, to forgo treatment of PHCs in CAMU-eligible waste where ''cost-effective treatment * * * is not reasonably available.'' Under today's proposed § 264.555(b)(2)(iii), this option would not be available for CAMU-eligible hazardous waste being placed in a hazardous waste landfill. Not only would treatment of PHCs be explicitly required, but that treatment would have to significantly reduce ''the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.''

Requiring treatment under this adjustment factor, therefore, means that the option described in proposed paragraph (E)(2)(iii) would not be available for placement of CAMU-eligible waste in a hazardous waste landfill—because this option assumes no treatment. Instead, because permitted hazardous waste landfills must meet the Subtitle C standards for new landfills, paragraph (E)(2)(i) (where treatment is conducted) will govern placement under this adjustment factor. The proposed language also requires that treatment of the PHCs would minimize the threat at the remediation site as well as at the landfill (where the landfill is at a different location). EPA expects that threats at the remediation site would typically be minimized, because the treated waste would be sent off-site, but this provision would ensure that any cross-media issues raised by on-site

These same standards would apply to debris disposed of in hazardous waste landfills under today's proposal. However, since EPA believes that Adjustment Factor B is inappropriate for wastes placed in hazardous waste landfills, under today's proposal, the Regional Administrator would not be able to adjust the treatment standard for debris based on this factor. Similarly, the limitations on Adjustment Factor E(2) in today's proposal would also apply to debris.

[8] Adjustment Factor B in the August 2000 proposal would allow treatment levels to be adjusted, based on ''cleanup standards applicable to the [remediation] site.'' Since, under today's proposal, the CAMU-eligible waste would be disposed of in permitted hazardous waste landfills, EPA concluded that the cleanup goals at the site were not relevant and, therefore, has not included this adjustment factor.

[9] Note that, under proposed § 264.555(f), the ''design of the CAMU'' in § 264.552(e)(4)(v)(E) means the design of the permitted Subtitle C landfill.

[10] Although the industry proposal would have required that the treatment in this case be ''cost-effective,'' EPA sees no reason to limit the treatment in this way. As long as the treatment meets the performance standard of this section, EPA believes that it is immaterial whether the treatment is ''cost-effective'' or not.

treatment were addressed, and that any threats from non-hazardous treatment residues left on-site were minimized.

Thus, today's proposal would significantly tighten the conditions of Adjustment Factor (E)(2) for CAMU-eligible wastes being placed in hazardous waste landfills. EPA is proposing to add these limitations to Adjustment Factor (E)(2)—particularly requiring treatment of PHCs in all cases under this factor—to ensure that any potential transfer of risk to the off-site location is minimized when the Regional Administrator relies on the protection afforded by the disposal unit to adjust the treatment standards. Merely requiring treatment for off-site placement would not provide much certainty on the degree of treatment, and therefore today's proposal includes a performance standard for the treatment: it would have to be ''treatment that substantially reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste * * *'' EPA notes that this standard (except in its limitation to PHCs) is essentially the same as the statutory treatment standard underlying the hazardous waste land disposal restrictions. By requiring, under this adjustment factor, that the risk drivers during the cleanup (that is, the principal hazardous constituents) be ''substantially'' treated to ''minimize threat,'' EPA believes that the proposal minimizes any potential for risk transfer in situations where the degree of treatment is predicated on the condition of the receiving landfill.

EPA notes that this proposed requirement for ''substantial'' treatment minimizing threat would apply only to adjustment factor E(2). EPA does not believe a comparable standard is needed for the other adjustment factors, which do not allow the Regional Administrator to base the decision solely on the engineering design of the receiving unit (*see e.g.,* RCRA Section 1002(b)(7), recognizing the uncertainties associated with land disposal of hazardous wastes).

3. *Disposal Unit Requirements.* Proposed § 264.555(a)(3) would limit hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits. This section would also require that the landfill meet the technical design and operating requirements for new landfills in 40 CFR Part 264, Subpart N. This requirement will ensure that the landfill meets the double synthetic liner and detailed leachate collection requirements of § 264.301(c). In addition, the landfill will be subject to the specific ground-water monitoring requirements of subpart F of Part 264 and the closure requirements of subpart G. EPA notes that design and operating requirements for CAMUs in the August 2000 proposal are largely based on standards for municipal solid waste landfills, rather than the more stringent hazardous waste requirements of today's proposal. As with the treatment requirement under Adjustment Factor (E)(2), EPA is proposing to take a more stringent approach for placement of CAMU-eligible wastes in hazardous waste landfills to minimize any potential for transfer of risk.

Today's proposal would not allow CAMU-eligible wastes to be placed in ''interim status'' hazardous waste landfills; placement is limited to units with RCRA hazardous waste permits. Under the RCRA regulations, existing facilities are grandfathered into the permit system under ''interim status,'' if they are in existence at the time they become subject to RCRA hazardous waste requirements. Eventually, EPA or the appropriate state must issue these facilities a RCRA permit, through a public process. The permit applies the RCRA hazardous waste requirements directly, through detailed conditions, to the waste management units covered in the permit.

EPA is proposing to limit placement of CAMU-eligible wastes, under the terms of today's proposal, to landfills with a RCRA hazardous waste permit because the part 264 standards provide a higher level of specificity than do comparable standards for interim status landfills in part 265—for example, in the area of ground-water monitoring. EPA also believes a permit contributes to minimizing risk transfer, because permits ensure close regulatory oversight of general facility operations (e.g., waste analysis plan, contingency plan, etc.) and financial assurance. For this reason, EPA believes the permitting standards and the permit process are important elements of the proposed approach.

Today's rule would not specify who had to hold the permit for the landfill. For example, the landfills accepting CAMU-eligible wastes might be off-site commercial units, or they might be at facilities controlled by the owner/operator of the remediation site.

B. Approval Procedures

The Regional Administrator (or the authorized state program) at the location of the hazardous waste landfill would be responsible for approving placement of CAMU-eligible waste in the landfill. Under today's proposal, approval procedures for placement of CAMU-eligible waste in the hazardous waste landfill would be identical to the CAMU approval procedures in the August 2000 proposal. Under today's proposed § 264.555(b), facility owner/operators wishing to place CAMU-eligible waste in a RCRA landfill must meet the same information requirements as apply to CAMU applications. That is, they would be required to provide information sufficient to enable the Regional Administator to approve placement, in accordance with proposed § 264.555(b). In addition, the person applying for approval must provide information on the waste required in proposed § 264.552(d)(1)–(3), unless it is not reasonably available. The Regional Administrator would use this information—which relates to waste origins and past management—to determine that the waste is indeed ''CAMU-eligible'' and to support use of the ''discretionary kickout,'' where appropriate. Before approving placement of the CAMU-eligible waste in the RCRA landfill, the Regional Administrator would have to provide public notice and a reasonable opportunity for public comment. These standards are identical to those for approval of CAMUs at the remediation site, and EPA believes they are equally appropriate for placement in a hazardous waste landfill, including off-site placement—where the Regional Administrator will be addressing the same questions (e.g., is the waste ''CAMU-eligible'' or should the discretionary kickout be exercised). For further discussion of these standards, see p. 51089–51090 of the August 2000 proposal. Finally, under today's proposal, approval procedures (including public notice and comment) for placement in a hazardous waste landfill would be specific to individual cleanups. EPA believes that this approach is appropriate, given the likely variation of CAMU-eligible wastes from cleanup to cleanup site, and the waste-specific nature of many aspects of the approval (e.g., identification of PHCs, choice of adjustment factors, etc.).

Proposed § 264.555(d) would require that the permit for the landfill be modified to incorporate CAMU-eligible waste into the permit, ensuring that its management is covered by appropriate part 264 hazardous waste requirements. In some cases, a permit modification would already be required by state or federal regulations, but in others—for example, where the waste met the waste acceptance criteria in the permit—it might not. In any case, proposed § 264.555(d) would ensure that the permit was modified to incorporate CAMU-eligible waste. The modification

would follow permit modification procedures specified in § 270.42 or comparable state regulations, but at a minimum it would include public notice, opportunity for comment, and an opportunity for a hearing. This process would ensure that the local public has the opportunity to comment on the specifics of how the waste is managed under the facility permit.

As part of the permit modification process, EPA expects that the Regional Administrator would include any requirements he or she determined were necessary to protect human health or the environment through the RCRA ''omnibus'' provision.[11] These requirements might include special management standards to address potential risks from hazardous constituents in the waste, including principal hazardous constituents. As specified in proposed § 264.555(d), the permit would also include recordkeeping requirements to demonstrate compliance with treatment standards approved for the waste. Under the current permitting requirements at § 264.13(a)(1), the facility owner/operator would be required to conduct an analysis of the waste that, ''at a minimum'' contains ''all the information which must be known to treat, store, or dispose of the waste in accordance with this part'' (which would include information to show that treatment levels approved by the Regional Administrator were met). The plans for this analysis would be incorporated into the facility waste analysis plan (see § 264.13(b)), and the results of the analysis kept in the facility operating records in accordance with § 264.73(b)(3).

In most cases, EPA expects that the process for approving placement of the waste (in § 264.552(c)) and the permit modification step (in § 264.555(d)) would take place as part of the same process, and EPA certainly encourages this approach. At the same time, however, today's proposal identifies these processes as separate requirements, because they reflect different regulatory events—the Regional Administrator's approval of the CAMU-eligible placement reflects a determination that the standards of § 264.555(b) are met in the context of waste from a particular cleanup, while the permit modification integrates the management of that waste into an already existing regulatory mechanism, that is, the facility permit.[12]

C. Other Requirements

EPA emphasizes that today's proposal is narrow in scope. Under today's proposal, the Regional Administrator may approve placement of CAMU-eligible waste in hazardous waste landfills under only limited circumstances. Meanwhile, the waste would remain a RCRA hazardous waste, subject to all applicable RCRA hazardous waste requirements. For example, the manifest, recordkeeping, and reporting requirements of part 262 and part 264 subpart E would apply. In other words, the waste would require a manifest when shipped to an off-site facility, and standard RCRA waste-management requirements would apply (e.g., waste analysis, storage requirements prior to placement, etc.).

In addition, when the waste is sent off-site, the proposed rule (§ 264.555(e)) specifies that the generator of the waste (i.e., the owner/operator of the remediation site) would be subject to the current reporting, recordkeeping, and tracking requirements of § 268.7(a)(4). This section establishes requirements that apply ''when exceptions allow certain wastes or contaminated soil that do not meet the [land disposal restriction] treatment standards to be land disposed.'' With the initial shipment of waste, the generator would be required to send a one-time written notice to the land disposal facility providing specific information, such as the EPA waste identification numbers, the manifest number of the first shipment, and waste analysis data.

In addition, today's rule does not in any way restrict remediation waste management options that already exist. For example, the land disposal restriction variances of § 268.44(h) would remain available as an alternative (or complementary) approach for CAMU-eligible wastes sent for disposal. Furthermore, as described above, non-hazardous wastes would also be unaffected, because their management and disposal are generally not regulated under the federal RCRA hazardous waste program, and they would not need special approval under today's rule to allow placement in a landfill.

V. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

Under § 3006 of RCRA, EPA may authorize qualified states to administer their own programs in lieu of the federal hazardous waste program and to issue and enforce permits within the state. A state may receive authorization by following the approval process described under Part 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing federal requirements. Today's supplemental proposal is considered to be less stringent than the existing federal program. Although states would not be required to adopt these provisions, EPA would strongly encourage them to do so.

The provisions in today's notice are a supplement to the CAMU amendments that were proposed on August 22, 2000

[11] Under the RCRA ''omnibus'' provision, ''each permit * * * shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.'' RCRA 3005(c)(3).

[12] This dual requirement is similar to the current situation with land disposal restriction treatment variances. For example, an LDR variance under § 268.44(h) might allow wastes to be disposed of in a hazardous waste landfill. Yet this variance would be independent of whether the landfill's permit needed to be modified to allow it to receive the waste. Similarly, no-migration variances under § 268.6 are issued for facilities under a separate process from permit modifications allowing the facility to receive the waste.

(65 FR 51080). The provisions in today's notice address the application of LDRs to cleanup wastes and would therefore also be promulgated under HSWA authority. Because these provisions are less stringent than the existing regulations, they will become effective only in those states which are not authorized for these parts of the hazardous waste program. Further, because the issues addressed by the provisions in today's notice have no counterpart in the existing CAMU regulations (or any other RCRA regulation), they would not be substantially equivalent to those regulations. Thus, states which are authorized for the 1993 CAMU rule would not be able to gain interim authorization-by-rule for the provisions in today's notice. The final CAMU amendments rule would not include the provisions in today's notice in the interim authorization-by-rule sections in proposed §§ 271.24(c) and 271.27 (see 65 FR 51115).

However, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's notice in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization. (This is similar to the approach the Agency took in promulgation of the 1993 CAMU rule. See 58 FR 8677, February 16, 1993.)

VI. Effective Date

Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. RCRA section 3010(b) provides, however, for an earlier effective date in three circumstances: (1) Where industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause.

EPA is proposing that today's rule become effective within 90 days after promulgation, at the same time as the proposed effective date for the CAMU amendments in the August 2000 proposal. EPA does not believe that industry needs a full six months to come into compliance with today's proposed requirements, because they do not directly impose any new requirements. Furthermore, if EPA finalizes today's proposal, it intends to do so at the same time as it finalizes the August 2000 proposal. The Agency believes that it will be simpler and less confusing if all the CAMU amendments become effective on the same date.

VII. Analytical and Regulatory Requirements

A. Planning and Regulatory Review (Executive Order 12866)

Under the Planning and Regulatory Review Executive Order 12866 (58 FR 51735 (October 4, 1993)), an agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) have an annual effect on the economy of $100 million or more or 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;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and therefore OMB has exempted this regulatory action from Executive Order 12866 review.

The existing regulatory requirements for management of hazardous cleanup wastes (e.g., the otherwise applicable LDR treatment requirements and the minimum technology unit design standards) can present a significant disincentive to facilities considering remediation. This condition was one of the main factors behind the 1993 CAMU Rule and was discussed in the August 2000 preamble to the CAMU Amendments. Under these baseline conditions, facilities that manage their remediation waste in a Subtitle C landfill typically incur significant costs to meet the LDR requirements. However, under today's proposal these facilities would have the option of treating their cleanup wastes that meet the definition of CAMU-eligible waste to the national minimum treatment standards (or the adjusted standards as described earlier in today's proposal) and disposing of them in a RCRA hazardous waste landfill. Thus, these facilities would enjoy a cost savings as a result of the less stringent treatment requirements of today's proposal.

Despite the existence of various alternatives to full Subtitle C management of cleanup wastes under the baseline requirements (such as CAMU or treatability variances), there are still cases where facilities reduce the scope of their remedial efforts or do not perform remediation at all. In such cases, the less rigorous requirements provided in today's proposal for Subtitle C management of cleanup wastes meeting the definition of CAMU-eligibility may provide enough incentive for some facilities to increase their remedial efforts. For those facilities shifting from no remediation in the baseline to remediation under the less stringent requirements of today's proposed rule, there may actually be an increase in costs. However, these costs would be borne voluntarily and can therefore be expected to result in an overall gain for the facility. A good example of such a case would be a brownfields redevelopment site.

Thus, as discussed above, the Agency believes that today's proposal will result in an overall reduction in the costs to facilities through the reduction in treatment requirements when cleanup work is managed in Subtitle C landfills.

B. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entities are defined as: (1) a small business meeting the RFA default definitions (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a

substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all the small entities subject to the rule. As discussed in the economic analysis section, EPA believes that today's proposal will provide regulatory relief for facilities engaging in remediation through treatment of CAMU-eligible wastes to the national minimum standards (or the adjustment factors) and disposal in Subtitle C landfills. For facilities which manage their cleanup wastes in the baseline according to full Subtitle C requirements, today's proposal would provide relief through the less stringent requirements for treatment of CAMU-eligible waste prior to disposal in a Subtitle C landfill. Additionally, for facilities which currently do little or no remediation due to the rigor of the baseline requirements for management of cleanup waste, today's proposal would offer less stringent requirements within which remediation might be pursued. EPA therefore concludes that today's proposed rule will relieve regulatory burden for all small entities. EPA is interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Today's proposal would require persons seeking approval to send CAMU-eligible wastes to a permitted Subtitle C landfill under the reduced treatment standards to submit sufficient information to enable the Regional Administrator to approve placement of such wastes. Under proposed § 264.555(b), such persons would be required to submit the information required by § 264.552(d)(1) through (3) for CAMU applications, unless not reasonably available. Section 3007(b) of RCRA and 40 CFR part 2, Subpart B, which defines EPA's rules on public disclosure of information, contain provisions for confidentiality of business information. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the final amended CAMU rule. If such a claim were asserted, EPA must treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

EPA estimates the total annual respondent burden and cost for the final new paperwork requirements to be approximately 235 hours and $63,120. The bottom line respondent burden over the three-year period covered by this ICR is 750 hours, at a total cost of approximately $189,360. The Agency burden or cost associated with this final rule is estimated to be approximately 39 hours and $1,860 per year. The bottom line Agency burden over the three-year period covered by this ICR is 117 hours, at a total cost of approximately $5,580. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 20, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by December 20, 2001. EPA will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions by State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under Section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of Section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA has determined that this rule will not result in the expenditure of $100 million or more by State, local, and

tribal governments, in the aggregate, or by the private sector in any one year. No provision in today's proposal would require a facility to employ the off-site disposal option in remediation. Therefore, no facility would employ this option unless it provided some benefit over and above currently existing options. Thus, today's rule is not subject to the requirements of Sections 202, 204, and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. Today's proposal provides a voluntary option for consideration by a facility undertaking remediation. Today's rule is not, therefore, subject to the requirements of Section 203 of UMRA.

E. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The regulatory changes proposed today would not involve the use of any technical standards not already addressed as part of the August 2000 proposal. As discussed in the August 2000 proposal, the Agency did not identify any potential applicable voluntary consensus standards during its development of the August 2000 proposal (e.g., during its discussion with Agency personnel and stakeholders who are experts in the areas addressed by the rulemaking).

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule will not have tribal implications because tribal governments do not implement the RCRA regulations and the proposed rule is not anticipated to have significant impacts overall, nor on individual facilities.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from management of CAMU-eligible wastes in hazardous waste landfills—present a disproportionate risk to children. Today's proposed rule would continue to require that a decision concerning overall protectiveness of any specific decision to allow placement of CAMU-eligible waste in a Subtitle C landfill under the proposal be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. Furthermore, today's proposed rule would require public notice and a reasonable opportunity for public comment prior to approving placement of CAMU-eligible wastes in a hazardous waste landfill.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

H. Federalism (Executive Order 13132)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.''

This proposed rule does not have federalism implications. It will not have substantial direct effects 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, as specified in Executive Order 13132. As today's proposal offers a voluntary option of disposal of CAMU-eligible wastes in hazardous waste landfills, the Agency believes that it could result in a

reduction in costs. Therefore, the Agency believes that it will not result in substantial effects on States. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Environmental Justice Strategy (Executive Order 12898)

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

Federal Agency Responsibilities for Federal Programs: Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

EPA believes that the risks addressed by the proposed rule do not have environmental justice implications. Today's proposed rule would continue to require that a decision concerning overall protectiveness of any specific decision to allow placement of CAMU-eligible waste in a Subtitle C landfill under this proposal be made by the Regional Administrator based on site-specific circumstances. Furthermore, today's proposed rule would require public notice and a reasonable opportunity for public comment prior to approving placement of CAMU-eligible wastes in a hazardous waste landfill. Therefore, EPA believes that there are no environmental justice issues associated with the CAMU proposed amendments.

J. Energy Effects (Executive Order 13211)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Part 264

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Dated: November 14, 2001.

Christine T. Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 264 is proposed to be amended as follows.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart S—[Amended]

2. Section 264.555 is added to Subpart S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Regional Administrator may approve placement of wastes in landfills, including landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA 40 CFR part 268, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Regional Administrator identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under § 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(1); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(E)(2), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N of this part, and be authorized to accept such wastes; for the purposes of this requirement, ''permit'' does not include interim status.

(b) The person seeking approval shall provide sufficient information (including the location of the landfill) to enable the Regional Administrator to approve placement of CAMU-eligible waste in accordance with paragraph (a) of this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before approving placement of the CAMU eligible waste in the permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for the CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 40 CFR 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 40 CFR 268.7(a)(4).

(f) For the purposes of this section only, the ''design of the CAMU'' in 40

CFR 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

[FR Doc. 01–28935 Filed 11–19–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1274–01; I.D. 102501B]

RIN 0648–AP06

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2002 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each fishery and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2002 summer flounder, scup, and black sea bass fisheries. The intent of this action is to specify allowed harvest levels and other measures to address overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 5, 2001.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.nmfs.gov/ro/doc/nero.html.*

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, ''Comments—2002 Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP at 50 CFR part 648, subparts A, G, H, and I outline the process for specifying annually the catch limits for the summer flounder, scup and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions and area restrictions) for these fisheries. These measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year).

The fisheries are managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). A Monitoring Committee (MC) for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held August 7–9, 2001. While the Board action is final, the Council recommendations must be reviewed by NMFS to assure that they comply with FMP objectives.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For the 2002 specifications, the Council recommended that 2 percent of the Total Allowable Landings (TAL) for summer flounder, and 3 percent of the TAL for scup and black sea bass, be set aside for scientific research purposes. A Request for Proposals has been published to solicit research proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. For informational purposes, this proposed rule includes a statement indicating the amount of the research set-asides. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the summer flounder, scup and black sea bass fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused set-aside amount to the TAL.

Summer Flounder

The FMP specifies a target F for 2002 of F_{MAX}—that is, the level of fishing that produces maximum yield per recruit. Best available data indicate that F_{MAX} is currently equal to 0.26 (equal to an exploitation rate of about a 22 percent from fishing). The total allowable landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP.

The status of the summer flounder stock is re-evaluated annually. The most recent assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June, 2001, indicated that the summer flounder stock is overfished and overfishing, as those terms are defined in the FMP, is occurring. This conclusion was derived from the fact that, in 2000, the estimated total stock biomass of 46,400 mt was below the biomass threshold of 53,200 mt under which the stock is considered overfished (½ B_{msy}), and the estimated F rate of 0.30 was 15-percent above the FMP overfishing definition of 0.26 (F_{MAX}).

However, the F of 0.30 estimated for 2000 represents a significant decline since 1994, when F was estimated to be 1.31. Total stock biomass has increased substantially from 39.7 million lb (18 million kg) in 1991 to 102.3 mlb (46.4 million kg) in 2000. Spawning stock biomass (SSB) has also increased