

50 CFR 402.02. The regulations provide that during formal consultation, an applicant shall have an opportunity to submit information; the Service will discuss with the Federal Agency and the applicant the Service's review and evaluation of the action as well as the basis for any finding in the Biological Opinion and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) and the applicant may request a copy of, and comment upon, any draft Biological Opinion requested from the Service by the Federal Agency before it is issued in final form by the Service. 50 CFR 402.14.

Should the role outlined in current regulations for an "applicant" be retained in counterpart regulations. If so, how should it be applied with respect to pesticide regulatory actions and what procedural rights should such an "applicant" have? At what points in the consultation process should the general public have an opportunity to participate?

8. *Clarify and improve the role of States and Tribes and other potential non-Federal representatives.* The current consultation regulations state that a Federal agency may designate a non-Federal representative to prepare biological evaluations and/or to conduct informal consultation with the Services. 50 CFR 402.08. While the regulations do not specify who may (or may not) act as a non-Federal representative, they do indicate that, in some circumstances, an "applicant" may be a non-Federal representative.

Please comment on the circumstances, if any, that pesticide companies could or should be designated as a non-Federal representative. In addition, please comment on whether, in view of the role that States and Tribes play in the enforcement of EPA regulatory decisions under FIFRA, States or Tribes could or should be designated as non-Federal representatives.

Should any special or additional procedures be established to provide greater participation of States and Tribes in the consultation process, either as a non-Federal representative or in another capacity?

9. *Fees.* A substantial increase in the number or complexity of consultations between EPA and the Services will require a corresponding increase in agency resources.

Please comment on whether it would be appropriate to charge fees to offset the added expenditures that would be necessary to conduct such consultations. Who should pay such

fees, and how should the amount of any fee be determined?

10. *Process for elevating and resolving disagreements between EPA and the Services.* Neither ESA nor the current consultation regulations prescribe how an action agency and the Services will resolve disagreements arising under ESA. EPA and the Services, however, have addressed this issue with respect to consultations about two of EPA's regulatory programs involving water. See Memorandum of Agreement, 66 FR 11202, February 22, 2001.

Please comment on the advantages and disadvantages to using counterpart regulations or some other mechanism to establish procedures for expedited resolution of disagreements between the Services and EPA.

C. Other Programmatic Aspects of the Consultation Process

EPA's ESPP Notice has invited public comment on the most appropriate approach to structure consultations about the potential impacts of pesticides on listed species. The ESPP Notice identified several possible approaches: Consultation on a pesticide-by-pesticide basis; on a geographically defined site-by-site basis; on a crop-by-crop basis; or a species-by-species basis. See 67 FR 71549, December 2, 2002.

In addition to issues about the structure of consultations, EPA and the Services are interested in issues relating to establishing priorities for such consultations. In view of the scope of the pesticide regulatory program, EPA and the Services think the number of consultations that may be needed in the foreseeable future could involve substantial resources. Moreover, given the number of pesticides and their potentially widespread and overlapping uses, the agencies foresee that there could be a large degree of potentially redundant effort unless the consultation process is carefully managed to achieve the most efficient use of limited resources. The Services and EPA therefore invite comment on any additional approaches that might improve the overall consultation process. In particular, the agencies invite comments on the feasibility and usefulness of developing a comprehensive, priority-based schedule for completing any necessary consultations. If such a schedule would be appropriate, how should the Services and EPA determine which consultations should receive highest priority? What role, if any, should the public have in forming the priorities for consultation? How should any priority scheme for endangered species determinations

relate to existing schedules for reregistration under FIFRA?

IV. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this ANPR is a "significant regulatory action" under section 3(f) of the Executive Order, because it raises "novel legal or policy issues arising out of legal mandates." The Agency therefore submitted this ANPR to OMB for the 10-day review period afforded under this Executive Order. Any changes made in response to OMB comments during that review have been documented in the public docket as required by the Executive Order.

Since this ANPR does not impose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing a subsequent notice of proposed rulemaking, the various other review requirements that apply when an agency imposes requirements do not apply to this ANPR.

As a part of your comments on this document, you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would facilitate the Agency's assessment of the potential impact of a procedural rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Agency will consider such comments during the development of the notice of proposed rulemaking as it takes appropriate steps to address any applicable requirements.

List of Subjects in 50 CFR Part 402

Endangered species, Environmental protection, Pesticides.

Dated: January 9, 2003,
William T. Hogarth.

Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Dated: January 8, 2003,
Craig Manson.

Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: January 21, 2003,
Christine T. Whitman.

Administrator, U.S. Environmental Protection Agency.

[FR Doc. 03-1661 Filed 1-23-03; 8:45 am]

BILLING CODE 6560-50-S