

0290, dated November 26, 2007, and Dassault Service Bulletin F2000EX-141, Revision 1, dated November 26, 2007, for related information.

Issued in Renton, Washington, on May 8, 2008.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic Atmospheric Administration

#### 15 CFR Part 923

[Docket No. 080416573-8574-01]

RIN 0648-AW74

#### Changes to the Coastal Zone Management Act Program Change Procedures

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NOAA intends to replace the Coastal Zone Management Act (CZMA) program change regulations (15 CFR part 923, subpart H) and associated guidance (OCRM's Program Change Guidance (July 1996)) with new regulations at 15 CFR part 923, subpart H. This notice requests public comment on the CZMA program change process that NOAA should consider when developing a proposed rule to replace 15 CFR part 923, subpart H.

**DATES:** Comments on this notice must be received by August 18, 2008.

**ADDRESSES:** Please send comments as an attachment to an e-mail in MS Word (WordPerfect is also acceptable), or in the body of an e-mail, to [CZMA.ProgramChanges.ANPR@noaa.gov](mailto:CZMA.ProgramChanges.ANPR@noaa.gov). Address all comments regarding this notice to Mr. Kerry Kehoe, Federal Consistency Specialist, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Attention: CZMA Program Change Comments. Written comments may also be sent to this address.

All comments received by the comment deadline and this **Federal Register** notice will be posted at OCRM's federal consistency Web page

at: <http://coastalmanagement.noaa.gov/consistency/rule.html>.

#### FOR FURTHER INFORMATION CONTACT:

Kerry Kehoe, Federal Consistency Specialist, 301-713-3155 ext. 151, Office of Ocean and Coastal Resource Management, NOAA.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The CZMA (16 U.S.C. 1451-1465) was enacted on October 27, 1972, to encourage coastal States, Great Lake States, and United States Territories and Commonwealths (collectively referred to as "coastal States" or "States") to be proactive in managing the uses and resources of the coastal zone for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the uses and resources of the coastal zone and in the importance of balancing the competing uses of coastal resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a coastal management program (CMP) pursuant to federal requirements. See CZMA section 306(d)(16 U.S.C. 1455(d)); 15 CFR part 923. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and related State coastal management concerns. Thirty-five coastal States are eligible to participate in the federal coastal management program. Thirty-four of the eligible States have federally approved CMPs.

An important component of the CZMA program is that State CMPs are developed with the full participation of state and local agencies, industry, the public, other interested groups and Federal agencies. See *e.g.*, 16 U.S.C. 1451(i) and (m), 1452(2)(H) and (I), 1452(4) and (5), 1455(d)(1) and (3)(B), and 1456. Program changes are changes to NOAA-approved components of State CZMA programs and new program components. There are five program approval areas (includes related changes to, or new, enforceable policies related to the five areas).

The five areas are:

1. Uses subject to program;
2. Coastal zone boundaries;
3. National interest;
4. Special Area Management Plans; and
5. Authorities & Organization.

Program changes are important for several reasons. The statute requires

submission to NOAA and NOAA approval (16 U.S.C. 1455(e)); state programs are not static; laws and issues change requiring continual operation of the CZMA State-Federal partnership. The State-Federal partnership is a cornerstone of the CZMA. The primacy of state CZMA decisions and the CZMA federal consistency requirement is balanced with adequate consideration national interest components, Federal agency input into the content of State programs, and NOAA approval.

In their federally approved CMPs and state CZMA decisions states must consider national interest areas of the CZMA to benefit national, not just local interests. In addition to the national interest in comprehensive coastal management by states, states must give priority consideration to coastal dependant national interest activities: Defense, energy, ports, transportation. For example, some of the more important issues NOAA must consider when evaluating program changes include whether the proposed change would: Affect CZMA national interest areas; seek to regulate federal agencies or areas outside state jurisdiction; be preempted by federal law; discriminate against particular coastal users or federal agencies; be enforceable under State law; raise issues under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), etc.

Program changes are also important because the CZMA has a strong public participation role, combined with the State-Federal partnership. NOAA can only approve CMPs and changes to CMPs after Federal agencies and the public have an opportunity to comment on whether proposed new or revised "enforceable policies" are appropriate under the CZMA authority and other federal and state legal requirements. An enforceable policy is a State policy that is legally binding under State law (*e.g.*, through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions) and by which a State exerts control over private and public coastal uses and resources, and which are incorporated in a State's federally approved CMP. See 16 U.S.C. 1453(6a). This means that enforceable policies must be given legal effect by State law and cannot apply to Federal lands, Federal waters, Federal agencies or other areas or entities outside a State's jurisdiction, unless authorized by Federal law. Also, the CZMA section 307 federal consistency provision requires that state enforceable policies are the standards that apply to Federal agency activities, federal license

or permit activities, outer continental shelf plans and federal financial assistance activities. 16 U.S.C. 1456. Therefore, Federal agencies and the public must have an opportunity to review proposed changes to a State's enforceable policies.

Program changes are also important because the CZMA federal consistency provision is triggered only if the federal action has reasonably foreseeable coastal effects and a State has applicable policies approved by NOAA that are legally enforceable under state law. It is therefore important for states to submit to NOAA for approval timely updates to CZMA enforceable policies.

## II. Need for Revised Program Change Regulations

The current program change regulations, 15 CFR part 923, subpart H, have been in place since the late 1970's. In 1996, NOAA made minor revisions to the regulations and also issued program change guidance that further elaborated on program change requirements. Over the years, states and NOAA have, at times, found the regulations difficult to interpret. For example, determining: When a program change is "routine" or an "amendment;" when a program change is "substantial;" what level of state analysis is required; when preliminary approval can be granted by NOAA.

In addition, the CZMA was revised in 1990, in part, to place greater emphasis on state CMP enforceable policies. This has led to the submission to NOAA of many more updates to CMPs. This increase in program change submissions has furthered the complexities of the current program change regulations. States and NOAA have, therefore, recognized the need to clarify the program change procedures and to provide a more administratively efficient submission and review process, while still addressing the importance of program changes, as discussed above.

## III. Action Requested From the Public

NOAA requests input from states, federal agencies and the public on revised program change regulations. Some of NOAA's goals in revising the program change regulations that reviewers should consider are:

1. Establishing a clearer and more efficient and transparent process for program change review;
2. Describing clearer approval/disapproval criteria and how these apply;
3. Using the statutory language of the CZMA, including time lines, extensions, and preliminary approval;

4. Keeping the "routine" concept to streamline the process for truly routine changes, but do away with "routine program changes (RPCs)" and "Amendments" and replace with just "program changes;"

5. Removing the "substantial" evaluations currently done by states and replace with just describing what the change is to the program. Further evaluations (by states or NOAA) would be for specific CZMA, NEPA, ESA, NHPA, etc., purposes, e.g., is a NEPA Environmental Assessment or Environmental Impact Statement, or ESA consultation needed;

6. Establishing use of NEPA categorical exclusions;

7. Submitting underline/strikeout documents showing changes to previously approved policies; and

8. Creating a program change checklist that states would submit to ease state and NOAA paperwork burdens and promote consistent submissions and NOAA analyses.

Comments received by NOAA will help to develop a proposed rule for 15 CFR part 923, subpart H. Any proposed changes to the CZMA program change regulations would be published in the **Federal Register** following compliance with the Administrative Procedure Act and other relevant statutes and executive orders.

Dated: May 13, 2008.

**John H. Dunnigan,**

*Assistant Administrator for Oceans and Coastal Zone Management.*

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### 33 CFR Part 385

#### Programmatic Regulations for the Comprehensive Everglades Restoration Plan

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of initiation of rule review.

**SUMMARY:** The Army has initiated a review of the programmatic regulations for the Comprehensive Everglades Restoration Plan required by section 601(h)(3)(E) of the Water Resources Development Act of 2000. As part of scoping the review for the regulations, the public is invited to provide comments on this review. Specifically, we welcome your comments on issues

concerning the programmatic regulations, any items in the regulations that should be reviewed, or suggestions to improve the programmatic regulations.

**DATES:** We will accept comments until August 18, 2008.

**ADDRESSES:** If you wish to comment on the review of the programmatic regulations, you may submit your comments by either of these methods:

1. You may submit written comments to: U.S. Army Corps of Engineers, ATTN: Stu Appelbaum, P.O. Box 4970, Jacksonville, FL 32232-0019.

2. You may send comments by electronic mail (e-mail) to: [ProRegs@usace.army.mil](mailto:ProRegs@usace.army.mil).

If submitting comments by electronic format, please submit them in ASCII file format or Word file format and avoid the use of special characters and any form of encryption. Please include your name and return e-mail address in your e-mail message. Please note that your e-mail address will not be retained at the termination of the public comment period.

**FOR FURTHER INFORMATION CONTACT:** Stu Appelbaum, Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, FL 32232-0019, phone (904) 232-2584; fax (904) 232-1251.

**SUPPLEMENTARY INFORMATION:** On November 12, 2003 the Department of the Army published the final rule in the **Federal Register** that established the programmatic regulations required by the Water Resources Development Act of 2000 as 33 CFR Part 385. Section 601(h)(3)(E) of the Water Resources Development Act of 2000 requires that the Secretary of the Army review the programmatic regulations whenever necessary, but at least every five years. Section 385.6 of the programmatic regulations requires that upon completing the review of the regulations, the Secretary of the Army will promulgate any revisions to the regulations after notice and opportunity for public comment in accordance with applicable law, with the concurrence of the Secretary of the Interior and the Governor, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.

The first step of the review process is to scope out issues and concerns. The public is invited to provide comments on the review of the programmatic regulations. We welcome the public to tell us about specific issues that should