

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 923, 926, 927, 928, 932, and 933

[Docket No. 960126015-6165-02]

RIN 0648-A143

Coastal Zone Management Program Regulations

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

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is revising and consolidating its regulations concerning coastal zone management (CZM) program development, approval, grants and evaluation, and removing obsolete rules concerning research and technical assistance. These regulations implement, in part, the Coastal Zone Management Act, as amended (CZMA). The purpose of this rule is to remove outdated provisions and to revise and consolidate remaining provisions. The intended effect of this rule is to make the CZM program regulations more concise and easier to use.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Roger Eckert, NOAA Office of General Counsel for Ocean Services, at 301-713-2967 (ext. 213), fax: 301-713-4408, e-mail: RBEckert@RDC.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

This rule is issued under the authority of the CZMA, 16 U.S.C. 1451 *et seq.*

II. Background

The CZMA was enacted to encourage and assist the 35 eligible coastal states and territories to develop and implement CZM programs to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's coasts. In all, 29 coastal states and territories have chosen to participate in this program, and their programs have received federal approval. Five states are currently developing programs for federal approval. Many of the regulations promulgated when the program began are no longer needed, now that the program has matured.

In March 1995, President Clinton issued a directive to federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to review all of their regulations, with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This rule is intended to carry out the President's directive with respect to the regulations implementing the Coastal Zone Management program.

On March 11, 1996 (61 FR 9745-9762), the Office of Ocean and Coastal Resource Management (OCRM) proposed to revise and consolidate these CZM regulations. Concurrent with the issuance of the proposed regulations, OCRM mailed draft guidance to coastal states concerning the program change regulations. OCRM received comments on the proposed revision of the regulations and/or draft program change guidance from the states of: Connecticut, Massachusetts, Michigan, New Hampshire, Oregon, Pennsylvania and Texas. These state comments focused on the proposed revision of 15 CFR 923.80(d) (the definition of a program amendment). OCRM will evaluate the comments directed at the draft guidance, and revise the guidance as appropriate. The comments directed at the proposed revision of the regulations are addressed below. In addition, OCRM will continue to consider these comments in its implementation of the CZMA and these regulations.

OCRM also received comments from the Federal Emergency Management Agency (FEMA) directed at coastal hazard mitigation efforts. Sections 303(2)(K) and 303(3) of the CZMA identify the need to address the adverse effects of coastal hazards, including erosion, land subsidence and flooding. While the regulations already identify hazardous areas as areas of particular concern (15 CFR 923.21(b)(7)), some additional emphasis on coastal hazards has been placed in § 923.25(a) and § 923.50(a)(5) to reflect the CZMA's policies. Coastal states may rely on these interpretive statements when submitting program changes concerning coastal hazard mitigation efforts. In addition, the regulation concerning plan coordination (§ 923.56(b)(2)) has been updated, consistent with FEMA's current planning authorities.

Accordingly, this final rule revises and consolidates the CZM regulations as follows:

A. Consolidates Regulations

The rule consolidates CZM program regulations found in present 15 CFR parts 923, 927, 928 and 932 into a revised part 923. This consolidation is expected to make the regulations easier for coastal states, territories and the public to use.

B. Removes Regulations Restating Statutory Language

The rule removes those regulations in 15 CFR part 923 that simply restate provisions contained in the Coastal Zone Management Act. These provisions are replaced, where appropriate, with references to the applicable sections of the CZMA. Removal of these provisions is in accordance with the rules of the Office of the Federal Register which discourage agencies from restating the language of a law in a document intended for publication in the Federal Register.

C. Removes Outdated Provisions and Simplifies Remaining Provisions

The rule removes those regulations in 15 CFR part 923 that are no longer necessary because the CZM program has reached its maturity, and simplifies the remaining provisions. Many of the more detailed regulatory requirements are removed. Since part 923 largely addresses requirements for the development and approval of coastal management programs, many of these changes do not apply to those states that already have federally approved CZM programs. For the eligible coastal states that do not yet have approved programs, OCRM will continue to provide necessary guidance, and actual and timely notice of appropriate application procedures. In particular, OCRM will continue to work with the 5 coastal states currently developing programs in order to ensure that those programs meet the criteria for federal approval. Finally, the rule removes 15 CFR part 933 because it implements a portion of the CZMA that was repealed in 1986. OCRM will provide guidance on a corresponding technical assistance provision that was added to the CZMA in the Coastal Zone Act Reauthorization Amendments of 1990.

D. Updates Program Change Regulations

The rule updates the program change regulations so that they more precisely reflect the structure of coastal management programs. In particular, the four criteria identified at 15 CFR 923.80(d)(1)-(4), by which program changes are assessed by OCRM, are replaced with a reference to the five program approvability areas identified in part 923: (1) uses subject to

management, (2) special management areas, (5) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest. These criteria will apply when states submit their proposed program changes to OCRM for review and approval; they are intended to assist in OCRM's evaluation of a program change.

The revised definition of a program amendment located at 15 CFR 923.80(d) is intended to ease rather than increase the administrative burden of states. While the four criteria were an effort to group the program approvability areas, not all program changes fit squarely within the four groups. The rule repeats the headings of subparts B through F of part 923, and so, tracks the program approvability areas. In addition, states may refer to these subparts for assistance in their analysis of a program change. Furthermore, states are no longer required to address those program areas that do not apply to their proposed changes. Rather, the rule allows states to discuss one or more of the program areas that would be affected by a change. Thus, the rule allows states greater flexibility to provide a more focused analysis. OCRM anticipates that the great majority of program change requests will continue to be routine program changes, i.e., OCRM does not anticipate that the revision will increase the number of program changes that are determined to be substantial in nature.

The element of 15 CFR 923.80(d) relating to special management areas has been simplified from "criteria or procedures for designating or managing areas [of] particular concern or areas for preservation or restoration," to the heading for subpart C of part 923: "special management areas." OCRM does not anticipate that this revision will increase the number of program changes relating to special management areas that will be determined to be amendments. Specifically, the elimination of the phrase "criteria or procedures for designating or managing" is not intended to broaden the scope of this element. Conversely, OCRM declines to reinsert this phrase into 15 CFR 923.80(d) because, in practice, this phrase has proven to be of little utility to coastal states submitting program changes in this category. Rather, the test for an amendment to the special management area portion of a coastal management program remains unchanged: the program change must be substantial. In other words, under both the old and the new language, whether a change in this area of a state's program constitutes an amendment requires an

evaluation of whether the program change is substantial.

The addition of "authorities" as a partial fifth category in 15 CFR 923.80(d) is merely a restructuring of the definition of program amendment. Previously, the term "authorities" was used at the outset of the definition of program amendment, and proved to be a source of confusion. Again, the test of whether a change is substantial, and therefore an amendment, remains unchanged. Minor program changes, including minor changes in authorities, remain approvable through the routine program change process.

The addition of an "organization" element to 15 CFR 923.80(d) clarifies that federal approval of coastal programs is indeed predicated, in part, on whether the state is organized to manage its coastal zone in an effective manner. The prior four criteria contained in § 923.80(d) did not assist states in analyzing the impacts of organizational changes, whereas the revision explicitly addresses this area of program approvability. Again, minor program changes, including minor organizational changes, remain approvable through the routine program change process.

The rule also adds explanatory statements concerning the addition of any enforceable policies to management programs. These statements reflect Congress' increased focus on enforceable policies in the Coastal Zone Act Reauthorization Amendments of 1990. OCRM, federal agencies, applicants for federal licenses or permits, and often the state coastal programs themselves, cannot always identify the enforceable policies in a program. OCRM recognizes that events beyond a coastal management program's control can change the enforceability of a policy. However, OCRM needs to know just what is being changed at the time of a program change, and federal agencies and applicants should be allowed to comment on the enforceable policies submitted for incorporation.

To be sure, coastal management programs allow for flexibility in state coastal management efforts. Certain changes in coastal management efforts may not need OCRM approval because they do not affect the federally-approved program. In other words, states structured their coastal management programs with varying levels of detail sufficient to "guide public and private uses of lands and waters in the coastal zone." CZMA section 304(12). Depending on the nature of the particular state coastal management program and the nature of the management change, a state may

make minor adjustments in how it manages the coastal zone without necessarily changing its approved coastal management program.

Alternatively, a state may determine that a necessary change in its federally-approved coastal management program is so insignificant that it need not be submitted to OCRM for review. However, the expenditure of CZMA funds is limited to those approved parts of a state's program (with an exception identified in CZMA section 306(e)(3)(B)), as is the requirement of federal consistency. In addition, this regulatory revision does not change the possibility that failure to submit program changes for OCRM approval may lead to adverse evaluation findings (15 CFR 928.5(a)(3)(i)(G) has been redesignated as 15 CFR 923.135(a)(3)(i)(G)). The routine program change procedure is intended to be an administratively efficient means by which states may submit, on a routine or periodic basis, insubstantial program changes for OCRM review and approval. OCRM shares the desire of coastal states to minimize administrative burdens and will work cooperatively to achieve this goal.

Finally, the term "routine program implementation" is changed to the more descriptive term "routine program change," and existing agency practice that allows for the resubmittal of routine program change requests is codified.

III. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule will not have a significant impact on a substantial number of small entities because (1) the rule addresses CZM