

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection and replacement shall be done in accordance with Airbus Industrie All Operator Telex (AOT) 29-04, Revision 1, dated June 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(h) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16526 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M#

14 CFR Part 39

[Docket No. 91-NM-211-AD; Amendment 39-8286; AD 92-14-04]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, that requires a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer. This amendment is prompted by full-scale fatigue testing which revealed cracks in the surface and underlying structure of the vertical stabilizer. The actions specified by this AD are intended to prevent reduced structural capability of the vertical stabilizer.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register and of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F-28 Mark 0100 series airplanes was published in the *Federal Register* on April 8, 1992 (57 FR 11926). That action proposed to require a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraphs (a) and (b) of the final rule have been revised to clarify the compliance time for the initial action.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Currently, no airplanes of U.S. registry will be affected by this AD. However, should one of the affected airplanes be imported and placed on the U.S. Register in the future, it will take

approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate will be \$55 per work hour. Required parts will cost approximately \$3,808 per airplane. Based on these figures, the total cost impact of the AD is estimated to be \$7,108 per airplane.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-14-04. Fokker: Amendment 39-8286. Docket 91-NM-211-AD.

Applicability: Model F-28 Mark 0100 series airplanes; serial numbers 11244, 11245, 11250 through 11256, inclusive, and 11268 through 11273, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the vertical stabilizer, accomplish the following:

(a) For airplanes having serial numbers 11244, and 11250 through 11256, inclusive: Prior to the accumulation of 8,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 1, Steps A. through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, inspect the rivet holes for cracks, in accordance with part 1, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(b) For airplanes having serial numbers 11245, and 11266 through 11273, inclusive: Prior to the accumulation of 8,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 2, Steps A. through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For Airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, inspect the rivet holes for cracks, in accordance with part 2, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(C) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with Fokker Service Bulletin SBF100-55-011, dated October 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(f) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16530 Filed 7-13-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 928 and 932

[Docket No. 910815-2061]

Implementing the Coastal Zone Act Reauthorization Amendments of 1990; Phase One

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

ACTION: Final rule.

SUMMARY: This final rule implements sections 6210 and 6212 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990. These sections amended the Coastal Zone Management Act of 1972 (CZMA) to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state. The regulations issued today set forth the criteria and procedures for applying for and awarding coastal zone enhancement grants, revise the

procedures applicable to review by the Secretary of a state's performance with respect to coastal management, and set forth procedures for invoking and lifting interim sanctions.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Vickie Allin, Policy Coordination Division (202/606-4100).

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (56 FR 52220, Oct. 19, 1991) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m.-4:30 p.m.) in suite 701, Universal South Building, 1825 Connecticut Avenue, NW., Washington DC 20235.

III. Regulatory Issues

A. General Background

The CZMA was enacted to encourage and assist coastal states and territories (states) in developing and implementing management programs to preserve, protect, develop and, where possible, restore or enhance the resources of our Nation's coast. On November 5, 1990, the President signed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990. Subtitle C, known as the Coastal Zone Act Reauthorization Amendments of 1990 (1990 Reauthorization), of title VI of that Act, reauthorized and comprehensively amended the CZMA. The amendments include:

- A new Coastal Nonpoint Pollution Control Program, which requires each coastal state with a federally approved coastal zone management (CZM) program to develop a program, to be implemented through section 306 of the CZMA and section 319 of the Clean Water Act, to protect coastal waters from nonpoint source pollution. Program approval and oversight are shared between NOAA and the Environmental Protection Agency (EPA);

- A new enhancement grants program which encourages each coastal state to improve its CZM program in one or more of eight identified national priority areas: coastal wetlands management and protection, natural hazards management (including potential sea and Great Lakes level rise), public access improvements, reduction of

marine debris, assessment of cumulative and secondary impacts of coastal development, special area management planning, ocean resource planning, and siting of coastal energy and government facilities;

- A new "Coastal Zone Management Fund" (CZM Fund) consisting of Coastal Energy Impact Program loan repayments from which the Secretary of Commerce is directed to pay (subject to amounts provided in appropriation Acts) for the Federal administrative costs of the program and to fund special projects, emergency state assistance, and other discretionary CZM activities;

- New requirements for expanded public participation opportunities in the program evaluation process and expedited production of final evaluation findings, and new authority to impose interim sanctions involving suspension of financial assistance for 6 to 36 months if a state or national estuarine research reserve (reserve) designated under section 315 of the CZMA is failing to adhere to its federally-approved program or management plan or the terms of financial assistance awards;

- A new requirement for the Secretary to provide technical assistance and management-oriented research to support development and implementation of state CZM programs;

- Authorization for NOAA to make annual achievement awards to individuals and local governments for outstanding accomplishments in the field of coastal zone management;

- Clarification of the scope of the CZMA's Federal consistency provisions, which state that Federal actions in or affecting the coastal zone must be consistent with federally-approved state coastal management programs, and overturning the Supreme Court's 1984 decision in *Secretary of the Interior v. California*, in which the Court held that OCS oil and gas lease sales were not subject to Federal consistency;

- Modifications to the National Estuarine Research Reserve System under section 315 of the CZMA, including increasing the maximum amount of Federal financial assistance for land or water acquisition at an individual reserve from \$4 to \$5 million, and increasing the maximum Federal share of costs for managing reserves and supporting educational activities from 50 to 70 percent;

- Reorganization and consolidation of CZM program approval requirements and other technical changes, including new statements of findings and purpose, new and revised policies and objectives, and new and revised statutory definitions; and

- Three new program approval requirements regarding public participation in permitting processes, consistency determinations and other similar decisions, providing a mechanism to ensure that all state agencies will adhere to the program, and requiring enforceable policies and mechanisms to implement the applicable requirements of the new Coastal Nonpoint Pollution Control Programs, respectively.

B. Approach to Rulemaking

Because of the substantial scope of the amendments and the statutory requirement to promulgate regulations for the Coastal Zone Enhancement Grants Program by November 5, 1991, NOAA decided to undertake a phased rulemaking. The final rule issued today is the first phase. It implements sections 6210 and 6212 of the Omnibus Budget Reconciliation Act of 1990. These Sections amended the CZMA to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state.

NOAA believes it is premature to undertake rulemaking on most of the other amendments at this time. For example, NOAA needs more information before proceeding to rulemaking on program approvability requirements for the new nonpoint pollution control programs. This is because EPA must issue guidance on management measures for sources of nonpoint pollution on the basis of which States are to develop their programs. EPA has 18 months in which to develop this guidance. In addition, NOAA and EPA have joint approval authority for these programs. NOAA's regulations need to reflect agreement between NOAA and EPA on who will have authority to approve which parts of the program. Thus, rulemaking to implement the Coastal Nonpoint Pollution Control Program will be a later phase of the rulemaking process.

Similarly, NOAA will not proceed with rulemaking at this time to implement the new program approval requirements of section 306(d) (14), (15) and (16). This is because no state is required to meet these requirements until, at the earliest, 3 years from the date of enactment (or November 1993), and because the requirements of sections 306(d) (14) and (15) have been partially met already by existing state programs. NOAA will incorporate the

requirements of sections 306(d) (14) and (15) into its program approval regulations and issue guidance to the States on meeting these requirements. The new requirement of section 306(d)(16) that state CZM programs contain enforceable policies to implement the new Coastal Nonpoint Pollution Control Programs will be incorporated into program approval regulations for these programs, when those regulations are developed.

NOAA will not issue regulations on the CZM Fund, the technical assistance program, or the CZM achievement awards at this time. Also, NOAA does not intend to revise its Federal consistency rules at this time. The changes to the Federal consistency provisions, except for overturning the Supreme Court's decision on outer continental shelf (OCS) oil and gas lease sales, merely codify NOAA's existing regulations. NOAA wishes to gain more experience with the new provisions, the issues likely to arise in their implementation, and the public and interagency concerns, before deciding how to address rulemaking on this subject.

The changes to the National Estuarine Research Reserve System (section 315 of the CZMA) are non-controversial conforming changes which will be included as a part of a separate rulemaking that will make other necessary clarifying changes to NOAA's existing section 315 regulations.

C. Final Rule

1. Coastal Zone Enhancement Grants Program

The 1990 Reauthorization amended section 309 of the CZMA to authorize a new Coastal Zone Enhancement Grants Program to encourage each coastal state to improve its CZM program in one or more of eight identified areas. Beginning in FY 1991, the Secretary is authorized to make grants (not less than 10 percent and not more than 20 percent of the amounts appropriated under sections 306 and 306A of the CZMA, up to a maximum of \$10 million annually) to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. As part of this effort, the Secretary is required to evaluate and rank state proposals for funding, and make funding awards based on those proposals. The Secretary has the authority to suspend a state's eligibility for enhancement grant funding for at least one year, if the Secretary finds that the state is not

undertaking the actions committed to under the terms of the enhancement grant.

Section 309(d) requires NOAA to issue regulations relating to the new enhancement grants program that establish:

(1) Specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

(2) Administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) Other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

Since the statute required NOAA to implement the new enhancement grants program immediately, NOAA adopted an interim approach for FY 1991. This allowed time for development of the statutorily-mandated regulations and identification of each state's priority needs for improvement with regard to the coastal zone enhancement objectives. In FY 1991, NOAA set aside 10 percent of the funds allocated under section 318(a)(2) for section 309 purposes. These funds were allocated to states based on the formula and weighting factors at 15 CFR 927.1(c).

The process developed by NOAA for determining a state's priority needs has been set forth in NOAA guidance on "Section 309 Assessments and Strategies," issued on May 10, 1991. NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The process for determining a state's priority needs has two stages. First, each state develops a public assessment document ("Assessment") that reviews each enhancement objective as it applies to the state and identifies the relative importance of each objective. Based on the Assessment, NOAA, after careful consultation with the state, identifies the priority needs for improvement in the state.

Once NOAA has identified the priority needs, the second stage is development of a multi-year strategy ("Strategy"). The state, in consultation with NOAA, proposes, to NOAA for approval, a Strategy that identifies specific program changes that the state will seek to achieve in the identified priority areas. The Strategy guides the

development of the state's FY 1992 and subsequent year section 309 grant proposals.

The final regulations implementing the new Coastal Zone Enhancement Grants Program under section 309 of the CZMA, as amended, assume that a state has completed an Assessment and Strategy in accordance with NOAA guidance. The final regulations are set forth at 15 CFR part 932, replacing the regulations currently at 15 CFR part 932.

The regulations at 15 CFR 932.1 set forth the basic eligibility requirements for receiving financial assistance under section 309. The objectives of assistance under section 309 (b), (c) and (d) are provided at 15 CFR 932.2.

Section 309(b) authorizes the Secretary to make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. The term "program change" is defined at 15 CFR 932.3 to include state actions that change current management programs, such as the development of new or revised enforceable policies, authorities and state coastal land acquisition and management programs. NOAA believes the definition is generally flexible enough to fund many types of activities that will ultimately lead to a program change. However, NOAA will provide additional guidance to the states on eligible activities. Other key terms, such as "project of special merit," "fiscal needs" and "technical needs," are also defined at 15 CFR 932.3.

The regulations for allocating funds under section 309 are set forth at 15 CFR 932.4. NOAA will annually determine the amount of funds to be devoted to section 309, taking into account the amount appropriated under section 318(a)(2) of the CZMA, as amended. NOAA recognizes the need to maintain core funding for state coastal zone management programs and has modified its guidance accordingly.

NOAA will award section 309 funds by: (1) Weighted formula and (2) individual review of projects of special merit. Projects proposed for funding under both categories are not state entitlements and, therefore, would be required to meet the identified criteria discussed below. NOAA will annually determine the proportion of available funds to be awarded to all eligible coastal states by weighted formula and the proportion to be awarded to eligible coastal states based on NOAA's review of individual project proposals of special merit.

In response to comments received on the proposed regulations, NOAA will set

a base allocation for section 306 and weighted formula funding. If funding allocations for sections 306 and 309 in any year are reduced, the reduction would first be taken from project of special merit funding, secondly from weighted formula funding and lastly from section 306 funding. This funding allocation scheme will be a part of the guidance document for the enhancement grant process.

Under the weighted formula approach, NOAA will establish state weighted formula funding targets. The weighted formula funding targets will be the state base allocation determined by operation of the formula at existing 15 CFR 927.1(c), multiplied by a weighting factor derived from NOAA's evaluation and ranking of the quality of the state's Strategy, as supported by the state's Assessment. The application of the weighting factor could result in a weighted formula funding target that is higher or lower than the state's base allocation.

Section 309 requires that the Secretary "evaluate and rank State proposals for funding." NOAA interprets the word "rank" to mean that a state's Strategy or project would be assigned a position or rank, relative to other state submissions, according to its satisfaction of the applicable criteria. NOAA anticipates that the ranking under the weighted formula approach could result in several ranking categories (so that some states would be assigned the same rank.)

NOAA will award the remaining section 309 funds, which are not awarded by the weighted formula approach, based on an annual review of projects of special merit. NOAA will limit the funding of projects of special merit to the highest ranked proposals based on criteria set forth at proposed 15 CFR 932.5(b). Competitive funding for projects of special merit is a new concept in distributing coastal zone management funding. However, NOAA believes that this is the CZMA's intent and will yield better projects.

The allocation process will allow each coastal state that has a NOAA approved Assessment and Strategy to pursue an enhancements program, while at the same time provide incentive for states to develop and submit more aggressive proposals which commit to making the greatest improvements toward the coastal zone enhancement objectives.

The regulations set forth the criteria for section 309 project selection at 15 CFR 932.5. States will be required to meet minimum criteria for projects that will be funded by weighted formula. For projects of special merit, states will be required to meet both minimum criteria

and additional criteria that include the merit of the project. NOAA will evaluate and rank projects of special merit using a point system. Following the first year of funding under this part, NOAA will consider a state's past performance in assessing the merit of the state's individual project proposals.

The regulations also set forth pre-application procedures for financial assistance under section 309 at 15 CFR 932.6. As suggested in many of the comments received on the proposed regulations, the procedures have been simplified. States are encouraged but not required to annually consult with the Assistant Administrator or his/her designee. Further, only one submission prior to the final application is required. This "draft proposal" would include all of the information necessary to make grants for the section 309 projects the state proposes for funding during the next fiscal year and would be submitted on a schedule set by the Assistant Administrator.

The procedures for submission of formal applications and for reviewing and approving projects under section 309 are set forth at 15 CFR 932.7. Applications for financial assistance under section 309 will be included with applications for financial assistance under subpart J of existing 15 CFR part 923. States will be notified of their section 309 awards at the same time that they are notified of their section 306/306A awards.

The regulations set forth the procedures for revising a state's Assessment and Strategy at 15 CFR 932.8. States will be required to submit proposed revisions to the Assistant Administrator prior to the initiation of the contemplated change. Based on the extent to which the proposed revision(s) change the original scope of the state's Strategy, the Assistant Administrator may require the State to provide public review and comment on the proposed revision(s) in accordance with NOAA guidance.

2. Review of Performance (Program Evaluation)

Section 312 of the CZMA requires a continuing review of the performance of coastal states with respect to coastal management, and detailed written findings on the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A)-(K) of the CZMA, and adhered to the terms of any grant or cooperative agreement. Section 312 further requires that a public meeting be conducted as part of each evaluation and that opportunity be

provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance.

The 1990 Reauthorization mandated changes to the procedures for carrying out evaluations of state coastal management programs and national estuarine research reserves. (Any changes to procedures for evaluation of estuarine reserves will be included as a part of a separate rulemaking to revise NOAA's section 315 regulations.) These changes require: A 45-day notice for public meetings, written response to all written comments on the evaluation, and completion of the final evaluation report within 120 days of the last public meeting held in the state. The 1990 Reauthorization amended section 312 of the CZMA to authorize new interim sanctions which provide for suspension and redirection of any portion of financial assistance awards to state coastal management programs or estuarine reserves if the state is failing to adhere to its approved program or reserve management plan, or a portion of the program or plan. Final sanction provisions at section 312(d) require the Secretary to withdraw program approval and financial assistance if the state refuses to take corrective actions specified under section 312(c)(2).

The basic requirements for review of performance are set forth at existing 15 CFR part 928. They define key terms, such as "continuing review," and provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared.

Specifically, these final regulations revise existing 15 CFR 928.4(b)(2) to require that notice of public meeting(s) be provided at least 45 days in advance. They revise existing 15 CFR 928.3(b)(7) to require that final findings be completed within 120 days of the last public meeting in the state. The regulation specifies that copies of the final findings document will be sent to all persons and organizations who participate in the evaluation. Persons who attend a public meeting or are interviewed during an evaluation may be asked to complete a card or sign-in sheet containing their name and address and indicating a desire to receive the final findings. A new regulation has been added at existing 15 CFR 928.3(b)(8) requiring that all final findings documents contain a section which specifically identifies, summarizes and responds to the written comments received during the evaluation process.

In addition, NOAA has determined that two of the statutory changes to

section 312(b)—namely, the requirement to respond in writing to all written comments received and the requirement to complete the evaluation within 120 days of the last public meeting—will increase the workload associated with the evaluation process. To deal with this increased workload, the final regulations revise the definition of "continuing review" at existing 15 CFR 928.2(a) to state that evaluations of State coastal management programs will be conducted and written findings prepared at least once every three years, rather than at least once every two years as previously provided. (NOAA's estuarine reserve regulations at existing 15 CFR 922.40(b) already provide for evaluation of estuarine reserves at least once every three years.) The phrase "but not more than once every year" has been deleted, so as not to restrict unnecessarily NOAA's flexibility to conduct issue or problem specific evaluations, as described below.

In addition, because NOAA recognizes that significant changes can occur in three years, the final regulations at existing 15 CFR 928.3(b)(9) provide for issue or problem specific evaluations to be conducted between regularly scheduled evaluations. In response to public comment, the regulation has been revised to clarify the conditions under which an issue or problem specific evaluation will be held: (1) To follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation, or (2) to evaluate evidence of potentially serious problems or issues that may arise during the day-to-day monitoring of state performance of grant tasks and other program implementation activities in the interim between scheduled evaluations. These issue or problem specific evaluations will still be subject to the public participation and other minimum requirements of section 312. States will be notified of an issue or problem specific evaluation in the same manner as they are notified of a regularly scheduled evaluation.

The regulations set forth the process for invoking interim sanctions at existing 15 CFR 928.5(a). They replace the old regulations on reduction of financial assistance for failure to make significant improvements, which were deleted because the significant improvement provisions were deleted in the 1990 Reauthorization. The process for invoking interim sanctions includes notice to the state and opportunity to comment on and rebut the finding of non-adherence on which the sanctions are based before any action is taken. Indicators of non-adherence are

provided to inform states of what NOAA expects and on what basis interim sanctions might be invoked.

To implement the changes to section 312(d) of the CZMA made by the 1990 Reauthorization, existing 15 CFR 928.5(b) entitled "Withdrawal of Program Approval and Financial Assistance" replaces the references to "unjustifiable deviation" with the requirement that the Assistant Administrator withdraw program approval and financial assistance if he/she finds that a state has failed to take the actions required under the interim sanction provisions of section 312(c).

D. Summary of Public Comments and Responses

On February 22, 1991, OCRM distributed issue papers on the rulemaking for the Coastal Zone Enhancement Grants Program and Review of Performance to approximately 225 interested parties on a mailing list established for this rulemaking and maintained by OCRM. Thirty-eight comments were received. After considering these comments, NOAA published a Notice of Proposed Rulemaking (56 FR 52220, Oct. 19, 1991) which invited public comments for 45 days, ending December 2, 1991. A public meeting was held on November 20, 1991. Comments were received from 41 sources, including 1 Federal agency, 3 NOAA offices, 20 coastal states and territories (30 letters), 3 interest groups, 1 business, 2 members of the Coastal Ocean Policy Roundtable, and 1 Congressional committee. The majority of commenters submitted comments on the regulations proposed to govern the Coastal Zone Enhancement Grant Program. A summary of the significant comments received together with NOAA's response organized by applicable subheading appear below.

A. Part 928—Review of Performance

Section 928.3 Procedures for Continuing Review of Approved State Coastal Zone Management Programs

Comment: Three comments expressed concern with the proposed revisions to § 928.3(b)(7).

(a) One comment objected to the deletion of the phrase "state comments" which the commenter felt may indicate unwillingness on the part of the Assistant Administrator to respond to a state's position or reasoning.

Response: No such intention should be read into this revision. Subsection 928.3(b)(7) established the timeframe for completing final evaluation findings. Previously, that timeframe was measured from the date of receipt of

state comments on the draft findings. The 1990 Amendments instituted a new requirement to complete the final findings within 120 days, measured from the date of the last public meeting in the state. The revisions simply implement the new requirement. They do not change the state's right to comment on the draft findings or NOAA's obligation to consider the state's comments.

(b) Another comment asked why the final evaluation findings should only be sent to those completing a card or sign-in sheet when the amendments call for the final findings to be sent to all participants in the evaluation.

Response: NOAA intends to send final findings to all who participate in evaluations. The purpose of the card or sign-in sheet is to verify the addresses and affiliations of persons who speak or are interviewed during the evaluation and to offer multiple individuals from the same organization the option of receiving individual copies or a single copy for the organization, as they wish. NOAA has modified the language of this regulation slightly to clarify its intent.

(c) One comment recommended that NOAA send a notice announcing the availability of the draft evaluation findings to all participants in the evaluation at the time the draft findings are sent to the state for review.

Response: NOAA disagrees. The draft findings contain preliminary conclusions and tentative recommendations and include material subject to revision. They are made available for review and comment to the organization responsible for the matters addressed.

Comment: One comment concerned proposed § 928.3(b)(8). That comment recommended that NOAA summarize and respond to oral comments made at the public meetings and attach the full text of the written comments it summarizes and responds to as an appendix to the final findings.

Response: NOAA disagrees. The statute requires NOAA to respond only to written comments, recognizing the difficulty of summarizing and responding to the vast amount of oral comment on evaluations. Even restricting a summary to oral comments at public meetings would require turning those informal meetings into formal hearings with written transcripts. This would add greatly to the cost and workload of evaluation without a corresponding benefit. Oral comments are considered in developing the findings and recommendations and are cited as appropriate in the findings document.

Comment: One comment sought criteria and a mechanism for notifying states of issue or problem-specific

evaluations under the proposed revisions to § 928.3(b)(9).

Response: NOAA agrees and has revised the regulation to indicate when it would consider undertaking an issue or problem-specific evaluation. NOAA does not believe any change is needed regarding notification mechanism since the regulation states that the procedures of §§ 928.3 and 928.4 will be followed. This includes the notification procedure at § 928.3(b)(3).

Section 928.5 Enforcement

Comment: Several comments concerned the procedures for imposing interim sanctions.

(a) One comment stated that the enforcement section was onerous and dealt only with mandatory recommendations.

Response: The comment appears to confuse the regulations implementing the interim sanctions provisions with changes made by NOAA to the format of its evaluation findings. Recently, in conjunction with notifying states of its FY 1992 evaluation schedule, NOAA/OCRM informed them that it was making two changes to the format of the evaluation findings. One of these changes is to distinguish between suggested or necessary actions. Since the format of evaluations is not specified in regulation, the regulations are not affected by this change. The regulations at § 928.5 specify the procedures for invoking interim sanctions. These procedures will be invoked only if a state is found to be not adhering to all or a portion of its approved management program.

(b) One comment expressed concern that suspension and redirection of funds already allocated by the lead state agency through signed contracts could cause undue hardship.

Response: NOAA's procedures for invoking interim sanctions call for the state to develop a proposed workplan which may propose alternative actions and/or an alternative schedule to correct a non-adherence problem. NOAA expects that its consultations with the state on this workplan would serve to identify and provide a means to avoid the undue hardship identified by the commenter.

(c) One comment recommended that the state be required to provide for public review and comment on the workplan it submits pursuant to § 928.5(a)(vi).

Response: NOAA believes that public review and comment is inappropriate. Of course a state is free to solicit comments regarding its proposed workplan.

(d) One commenter recommended that the "schedule of actions that should be undertaken by the State" in § 928.5(a)(1)(ii)(A) be one that is developed with due regard for the state's administrative ability to satisfy it.

Response: NOAA's procedures at § 928.5(a)(2)(vi) provide for the state to suggest an alternative schedule.

Comment: Several comments concerned the indicators of non-adherence that NOAA may consider in deciding whether to invoke interim sanctions.

(a) One comment called for the development of national standards for judging the performance of state coastal zone management programs.

Response: Given the statutory flexibility given to states in designing the content and organization of their programs, NOAA has concluded that national standards applicable to all programs are infeasible at this time. NOAA has included several indicators on non-adherence which encompass the various approvable organizational structures of approved programs and which provide guidance to the states on what NOAA expects and on what basis NOAA would consider imposing interim sanctions.

(b) One comment cautioned NOAA not to rely on the new requirements of Sections 306(d) (14), (15), and (16) in assessing state performance until guidance has been issued to the states and they have had a reasonable opportunity to comply.

Response: NOAA agrees and has revised its indicators at § 928.5(a)(3)(i) (B) and (E) accordingly.

(c) One commenter stated that the regulatory requirements at § 923.40 (as referenced in § 928.5(a)(3)(i)(B)) did not become legally binding until April 1, 1978, and therefore should not be applied to state programs approved before that date.

Response: Although not applied retroactively, states whose programs were approved prior to April 1, 1978, were given a reasonable time to bring their programs into conformance with the new requirements. At this time, all approved programs have been found to comply with § 923.40.

(d) One commenter requested that the statutory and regulatory basis for requiring notice that a management program decision would conflict with a local zoning ordinance be set forth in § 928.5(a)(3)(i)(E).

Response: NOAA has done so.

(e) One comment expressed concern that the review standard of "non-compliance of local coastal programs with the approved state program

[including] local permitting or zoning decisions that are inconsistent with state standards or criteria * * * may be outside a state coastal zone management program's control.

Response: This indicator refers only to state coastal programs that have chosen the local coastal program form of organization. All of these programs must be found to have a legally enforceable mechanism to assure local coastal programs they approve will adhere to state standards or criteria. Therefore, if this indicator were truly outside the state coastal management program's control, that program would no longer be approvable.

(f) One comment requested NOAA define what it meant by "in a timely fashion" at § 928.5(a)(3)(i)(G).

Response: NOAA has modified this indicator to clarify that program changes must be submitted within the timeframes specified at §§ 923.81 and 923.84.

(g) One commenter recommended adding to the indicator at § 928.5(a)(3)(ii) consideration of the magnitude of the injury or threat to coastal resources caused by the non-adherence.

Response: NOAA's indicators encompass both procedural and substantive aspects of program performance. Although NOAA does not believe it is appropriate to modify the section indicated, NOAA does agree that its consideration of the substantive aspects of program performance should consider the on-the-ground impacts of a possible non-adherence issue.

Therefore, NOAA has modified § 928.5(a)(3)(i)(A) to encompass such consideration.

Comment: One comment concerned the proposed revisions to the regulations on withdrawal of program approval and financial assistance. That comment recommended NOAA increase the period for states to respond to a proposed notice of withdrawal from a maximum of 60 days to a maximum of 90 days, in light of NOAA's proposal to increase the period between regularly scheduled evaluations from 2 to 3 years.

Response: There is no relationship between the period of time between regularly scheduled evaluations and the period of time allowed for state response to a notice of withdrawal of program approval. NOAA believes 60 days for state response to the proposed withdrawal notice is sufficient.

B. Part 932—Coastal Zone Enhancement Grants

NOAA received many comments that were critical of its proposed regulations. However, NOAA believes the basic structure of its regulations is sound.

NOAA believes the allocation of some funds by weighted formula and some by individual project evaluation and ranking provides a reasonable accommodation to state needs for longer-term predictable funding while assuring that the funds will go to the best projects. Therefore, although some changes have been made to address specific suggestions and to simplify the requirements where possible, the basic provisions contained in the proposed regulations remain unchanged.

Section 932.1 General

Comment: Seven comments expressed opinions about the general nature of the regulations.

(a) Several comments supported the enhancement grants program. One of them stated, however, that a state should not be punished if it did not participate in the program.

Response: The enhancement grants program under § 309 is a voluntary program. Failure to participate will in no way affect funding of base programs under § 306.

(b) One comment expressed concerns about the use of a weighted formula for any portion of the grants. The comment stated that the proposed weighting formula was too cumbersome, unnecessarily complex, and not in the spirit of the original CZMA.

Response: NOAA believes that a weighted formula is an appropriate method of carrying out CZMA's intent for NOAA to "rank and evaluate" proposals.

(c) Several comments stated major concerns about the competitive nature of grant awards.

Response: NOAA believes that Congress intended that section 309 grants be awarded through a competitive process.

(d) One comment recommended that an alternative process for allocating funds under section 309 be instituted for FY 92, and that the majority of the money be distributed using the same formula as for section 306 funding. Another commented that the rules should be adopted as "interim final" and finalized after experience is gained.

Response: NOAA believes that proceeding with the adoption of these regulations will not interfere with the fair and timely issuance of grants under these regulations for FY 92. NOAA does not believe that the intent of the CZMA is for NOAA to distribute these funds through the use of the section 306 formula. NOAA believes that the issue of potential amendments to the regulations is premature and that the

majority of issues can be addressed in periodic guidance documents.

Section 932.2 Objectives

Comment: Three comments concerned the objectives.

(a) Two comments stated that the regulations too narrowly defined the objectives in regards to demonstrable improvements in the way resources are managed. They cited section 309(a) and (d) to show that other methods of management may be warranted under the enhancement grant program.

Response: NOAA disagrees. The overriding factor in determining both the objectives and the definition of "program change" at § 932.3(a) is the use of the phrase "may make grants to coastal states to provide funding for development and submission for Federal approval of program changes." Therefore, no changes have been made to this section.

(b) One comment sought the addition of two objectives.

Response: The objectives in this section reflect the objectives in section 309(a) of the CZMA. NOAA does not believe that additional objectives can be added unless the CZMA is further amended.

Section 932.3 Definitions

Comment: Twenty-five respondents commented on the definition of "Program change". One comment stated that the definition should be tied directly to accomplishments such as routine program implementation (RPI) or program amendments and should not be used simply to implement existing programs. Twenty-three respondents (all coastal states and territories) felt the definition was much too narrow. The most frequent clarification was that the definition should include limited implementation of program improvements developed under section 309. Another frequently recommended expansion of the definition was to allow program improvements that were somehow under the threshold of RPI.

Response: NOAA believes that the objective of the enhancement grant program is "program changes", primarily enforceable policies. Historically, states have tended not to submit routine changes due to the amount of processing necessary to initiate these changes. NOAA will consider revising its guidance for routine program changes (called routine program implementation or RPI) to effectively reduce the amount of paperwork required of the states so that this enhancement grant program can run efficiently.

Comment: Two respondents offered comments on the definition of "Assessment".

(a) One commenter stated that the guidance for preparing an assessment should have to be submitted to public review just as the state must have public review as an integral part of the assessment process.

Response: NOAA routinely circulates draft guidance to the states and other interested parties for comment prior to initiating its use. The guidance is not of such a nature that it requires comment through a formal public notice process.

(b) One commenter stated that the proposed definition was too negative in that it only mentioned "problems" related to the enhancement objectives.

Response: NOAA agrees and has used the phrase "problems and opportunities" in the final regulations.

Comment: Two respondents offered comments on the definition of "Strategy". They felt that the strategy document was being too narrowly defined and that it should focus on a wider variety of issues and not necessarily identify all implementation methods that may be used. They pointed out that a part of the strategy may be to identify the tools.

Response: NOAA does not intend to exclude meaningful visionary elements from the strategy process, but must insist that the documents submitted have defined goals and objectives with paths and benchmarks to determine if the objectives are being met. While some "solutions" may not be evident at the beginning of the process, NOAA would like a clear, focused description of the process to be used to develop the enforceable policies required of the enhancement grant program.

Comment: Two respondents commented on the definition of "Fiscal needs". They stated that the definition combined with the requirements at § 932.6(b)(5)(i) are far greater than are required to adequately show fiscal need.

Response: NOAA is required to show that the Federal funds are needed by the state prior to making grant awards. The requirements at § 932.6(b) may seem extensive, yet are not meant to require lengthy analysis. Therefore, the language has been retained in the final regulations.

Comment: One respondent commented that the definition of "Assistant Administrator" needed to specifically define who would be the "designee".

Response: Delegation of Authority within NOAA will follow normal defined NOAA procedures. Accordingly, no change is needed to this definition.

Section 932.4 Allocation of Section 309 Funds

Comment: Twenty-one respondents commented that the base level of funding under section 306 should be maintained.

Response: NOAA agrees that a base dollar level of funding (based on FY 91 funding) should be maintained and will modify its guidance document accordingly. The guidance document is also being amended to reflect a three tier approach to funding: Base section 306 funding, a base weighted formula funding, and project of special merit (PSM) funding available annually on a competitive basis. Each of the three levels would be set annually after appropriation levels have been enacted. If less funds are appropriated than the previous year, the PSM funding would be reduced. If additional cuts are needed, weighted formula funding would be reduced, followed, as a last resort, by reductions in base section 306 funding.

Comment: Sixteen respondents commented on (b) the allocation of funds between sections 306 and 309. One party commented that the regulations should reflect Congressional intent by providing that the full 20 percent of CZM funding go to section 309 unless, due to lower than anticipated appropriations, base state programs would be impaired. Fifteen respondents recommended that the Assistant Administrator set the allocation to section 309 at the minimum (10 percent) level unless the base section 306 funding increased.

Response: NOAA believes that the funding levels should be set annually as a part of the guidance document after appropriation levels have been set by Congress. The rule merely repeats the language of section 309, and no change has been made.

Comment: Twenty-two respondents commented on (c) the allocation of funds between weighted formula and projects of special merit. Of these, one commenter recommended that at least 90 percent be allocated to weighted formula; four commented that at least 80 percent go to weighted formula; two stated 75 percent to weighted formula; one recommended at least 60 percent to weighted formula. The remainder stated that "as much as possible go to weighted formula" or "the allocation of funds be made as predictable as possible."

Response: NOAA is establishing, as a matter of policy, as previously stated in the response to comments on section 932.4(1) above, a base weighted formula

dollar amount rather than a ratio between weighted formula and projects of special merit. This will give the states more predictability in funding multi-year strategies and projects. This funding criterion will also appear in the guidance document.

Comment: Several respondents commented on section (d) weighted formula funding.

(a) Several commented on the range of weights as applied in the guidance.

Response: Section 932.4(d)(4) merely states that the Assistant Administrator may set a range of weights. NOAA believes that the actual range of weights should be set forth in the guidance document, as opposed to the regulations, so that it can be readily amended to reflect changes in funding levels and experience with managing the program.

(b) Several commented that the weighted formula process was much too complicated and subjective.

Response: NOAA has revised this section to clarify the actual process to be followed in the review of weighted formula projects which will make it less complex. In regard to the subjectivity comment, NOAA believes that the detailed process outlined in these regulations and the guidance document will ensure the objective application of the standards.

Comment: Eighteen respondents commented on (e) funding for projects of special merit. Of these, seventeen expressed their concern about interstate competition, and one expressed support for the process and recommended that there not be any caps placed on the amount that any one state should be able to receive.

Response: NOAA continues to believe that the projects of special merit are a vital part of the enhancement grants program. We are refining the FY 92 guidance document to address the issue of caps on individual state grants under this program. We believe that increasing the amount of funds available under weighted formula funding has made the projects of special merit (with lower funding levels) even more competitive and thus caps for individual states may not seem appropriate at this time. The guidance document is the appropriate place for discussion of these caps.

Section 932.5 Criteria for Section 309 Project Selection

Comment: Twenty respondents commented on the general project selection criteria.

(a) Nineteen of these respondents commented that the procedures outlined in the proposed regulations were much too complex and cumbersome.

Response: In an effort to make the application procedures less complicated, in addition to the changes made at § 932.5, other changes have been made. In § 932.6, pre-submission consultation is made optional. The regulations also clarify that the initial or draft proposal is in the same format and will contain the same information as the final application at § 932.7.

(b) One commented that NOAA should avoid the urge to "over-quantify" the process.

Response: NOAA believes that the process outlined in § 932.5 is an objective and fair process without unnecessary reliance on quantification.

Comment: Several parties commented on (b) the criteria for projects of special merit.

(a) One commenter stated that interstate projects should be given higher priority.

Response: The former section 309 of the CZMA dealing with interstate grants was repealed as a part of the 1990 Reauthorization. Therefore, projects of this type are ineligible for funding under the new section 309; however, they are eligible for funding under the new section 308, the Coastal Zone Management Fund.

(b) One respondent commented that the terms "overall benefit of the project to the public" and "transferability" should either not be used or should be defined prior to their use as evaluation criteria. Another respondent commented that "technical needs" should not be used as an evaluation criteria.

Response: NOAA believes that all three of these criteria are appropriate and necessary evaluation measures.

Section 932.6 Pre-application Procedures

Comment: As stated at § 932.5, many commenters stated their opinion that the evaluation and application processes were too complex.

Response: NOAA has simplified the process in the final regulations. The "pre-submission consultation" has been made an optional process due to the high level of consultation that will be required during the assessment and strategy preparation. Further, the "pre-proposal" process has been clarified by renaming it the "draft proposal" to indicate that no additional information is required for the final application.

Comment: Two respondents commented that travel should be an eligible expense under the enhancement grants.

Response: NOAA agrees and has revised § 932.6(b) to include travel as an allowable expense.

Comment: One commenter suggested that a public review step be added to both the pre-proposal process and the strategy revision process.

Response: Public participation in the strategy amendment process may be required by the Assistant Administrator at § 932.8 if the changes significantly revise the scope of the approved strategy. Public participation at the draft proposal stage is not necessary due to the direct linkages to the assessment and strategy development processes.

Comment: One respondent recommended amending § 932.6(b)(3) to allow expenses for capital projects.

Response: NOAA disagrees. Congressional intent clearly indicates that enhancements be developed for coastal zone management programs.

Comment: One respondent commented that § 932.6(b)(8) be amended to allow states to submit proposals for more money than the weighted formula funding target, so as to put a state at an advantage to use funds not used by other states.

Response: NOAA has clarified its regulations accordingly. However, NOAA retains the right to choose which projects are funded with weighted formula or project of special merit funds if additional funds are available.

Comment: One respondent recommended that an additional requirement be added to § 932.6(c)(2) to ensure that technical advisors have a knowledge of the specific geographic area upon which they are commenting.

Response: NOAA agrees as a matter of policy to ensure regional representation of any external reviewers.

Section 932.7 Formal Application for Financial Assistance and Application Review and Approval Procedures

Comment: Eight respondents commented that interim regulations should be followed for FY 92 funding, as the time periods outlined in the guidance cannot be met.

Response: These comments generally refer to issues considered in the FY 92 guidance document. NOAA believes that proceeding with adoption of these regulations will not interfere with the fair and timely issuance of section 309 grants for FY 92.

IV. Other Actions Associated With the Notice of Proposed Rulemaking

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined

by the Order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. NOAA has concluded that this is not a "major" regulatory action, as defined by the Executive Order, because it will not result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These rules will provide for enhancement of State CZM programs in eight national objective areas and will improve the evaluation of their performance. The rules only serve to strengthen the framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts. Therefore, preparation of an RIA is not required.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider explicitly the effect of regulations on "small entities." A Regulatory Flexibility Analysis was not prepared for this regulatory action. This rule sets forth procedures for the Coastal Zone Enhancement Grants Program and review of performance. The rule affects only State governments, which are not "small government entities," as defined by the RFA. Since the rule will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. Information requirements of section 312—Review of Performance—embody existing procedures and do not constitute any increase in reporting on the part of any affected party.

The rule to implement section 309—Coastal Zone Enhancement Grants—contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement is a one-time

requirement for Assessments of State priority needs for improvement in the eight national priority areas and Strategies for making those improvements and is necessary to implement section 309(d) of the CZMA, as amended, which requires the Secretary of Commerce to identify each State's priority needs for improvement, after careful consultation with the States. These Assessments and Strategies will replace an existing reporting requirement (part C of the annual performance report) for FY 1991. Therefore, the paperwork burden has been minimized.

In addition, all States will be required to provide pre-proposals containing their proposed enhancement grant projects annually at the same time, in order that NOAA may carry out the individual evaluation and ranking of proposals required by statute and provide States with timely information on approved projects to include in their joint section 306/306A/309 financial assistance award applications. This procedure for pre-proposals will replace a similar procedure for interstate grants, authorization for which was repealed by the 1990 Reauthorization.

The request to collect this information has been approved by the Office of Management and Budget under section 3504(h) of that Act (OMB Control No. 0648-0119). Public reporting burden for this collection is estimated to average 480 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and developing the Assessments and Strategies. Comments on this estimate may be sent to:

The Office of Ocean and Coastal Resource Management, Policy Coordination Division, 1825 Connecticut Avenue, NW., Washington, DC 20235, Attention: Vickie A. Allin.

or

Office of Management and Budget, Paperwork Reduction Project (0648-0119), Washington, DC 20530.

D. National Environmental Policy Act (NEPA)

NOAA has determined that this regulatory action will not significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement will not be prepared.

E. Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects

15 CFR Part 928

Administrative practice and procedure, Coastal zone, Grant programs—natural resources, and Natural resources.

15 CFR Part 932

Coastal zone, Grant programs—natural resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: July 2, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, NOAA amends 15 CFR chapter IX as set forth below.

PART 928—REVIEW OF PERFORMANCE

1. The authority citation for part 928 is revised to read as follows:

Authority: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

2. Section 928.1 is revised to read as follows:

§ 928.1 General.

This part sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This part defines "continuing review" and other important terms, and sets forth the procedures for:

- (a) Conducting continuing reviews of approved State CZM programs;
- (b) Providing for public participation;
- (c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and
- (d) Withdrawing program approval and financial assistance.

3. Section 928.2 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

§ 928.2 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

* * *

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

4. Section 928.3 is amended by revising the section heading, paragraphs (a), (b)(7), (c)(1)(ii), (c)(3) introductory text, and (c)(3)(iii); and by adding paragraphs (b) (8) and (9) to read as follows:

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(b) * * *

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the *Federal Register*.

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of 15 CFR 928.3 and 928.4.

(c) * * *

(1) * * *

(ii) Addressed the coastal management needs identified in section 303(2) (A)-(K) (16 U.S.C. 1452); and

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)-(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)-(K) will occur as follows:

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

5. Section 928.4 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 928.4 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the

public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the *Federal Register*, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) * * *

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the *Federal Register*. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 15 CFR 928.3(b)(7).

6. Section 928.5 is amended by revising paragraphs (a), (b)(1), and (b)(2) (i) and (iii) to read as follows:

§ 928.5 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.*

(1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451-1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at 15 CFR 928.5(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at 15 CFR 928.4. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator

will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate

NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will

adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for

activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(c) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in 15 CFR 928.5(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) * * *

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to 15 CFR 928.5(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

* * *

7. Part 932 is revised to read as follows:

PART 932—COASTAL ZONE ENHANCEMENT GRANTS PROGRAM

Sec.

- 932.1 General.
- 932.2 Objectives.
- 932.3 Definitions.
- 932.4 Allocation of section 309 funds.
- 932.5 Criteria for section 309 project selection.
- 932.6 Pre-application procedures.
- 932.7 Formal application for financial assistance and application review and approval procedures.
- 932.8 Revisions to assessments and strategies.

Authority: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

§ 932.1 General.

(a) The purpose of this part is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This part describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this part if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy,

submitted in accordance with NOAA guidance and 15 CFR 932.8;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1825 Connecticut Avenue, NW., suite 724, Washington, DC 20235.

§ 932.2 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

§ 932.3 Definitions.

(a) *Program change* means "routine program implementation" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/ understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance¹), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this Part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the

¹ NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at 15 CFR 932.5(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at 15 CFR 932.5(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

§ 932.4 Allocation of section 309 funds.

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of \$10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into

account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed \$10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at 15 CFR 932.1(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at 15 CFR 927.1(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under 15 CFR 932.4(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to

improve its weighting factor, in accordance with the procedures at 15 CFR 932.8.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under 15 CFR 932.4(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in 15 CFR 932.3(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at 15 CFR 932.5(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to 15 CFR 932.4(b), the proportion to be awarded by weighted formula pursuant to 15 CFR 932.4(c), the State's weighted formula funding target pursuant to 15 CFR 932.4(d), and the total amount of funds available for funding for projects of special merit pursuant to 15 CFR 932.4(e).

§ 932.5 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.*

(1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments²;

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in 15 CFR 932.6(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.*

(1) After determining those projects that

² OMB Circular A-87: Cost Principles for State and Local Governments is available from the Office of Ocean and Coastal Resource Management, Policy Coordination Division, Universal South Building, room 701, 1825 Connecticut Avenue, NW., Washington, DC 20235.

will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in 15 CFR 932.3(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in 15 CFR 932.3(f).

(c) Section 309 funds not awarded to States under § 932.5(a) will be awarded to States under 15 CFR 932.5(b).

§ 932.6 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see 15 CFR 932.6(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see 15 CFR 932.1(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be

determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to 15 CFR 923.95(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under 15 CFR 932.5(a) and which projects should be funded as projects of special merit under 15 CFR 932.5(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and

equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in 15 CFR 932.3(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under 15 CFR 932.5(a) exceeds the State's weighted formula funding target pursuant to 15 CFR 932.4(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at 15 CFR 932.5(a) and evaluate and rank projects of special merit based on the criteria at 15 CFR 932.5(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at 15 CFR 932.5(a), the Assistant Administrator may either reduce or deny the amount available to the State under 15 CFR 932.4(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart J of 15 CFR part 923.

§ 932.7 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same

schedule as applications for financial assistance under subpart J of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at 15 CFR 932.6(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart J of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to 15 CFR 932.6(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

§ 932.6 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any

change in the weighting factor assigned to its Strategy.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35-25573; File No. S7-4-90]

RIN 3235-AF48

Exemption of Issuance and Sale of Certain Securities by Public-Utility Subsidiary Companies of Registered Public-Utility Holding Companies; Exemption of Acquisition of Public-Utility Subsidiary Company Securities by a Company in a Registered Public-Utility Holding Company System

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52, which exempts certain financing transactions involving the securities of the public-utility subsidiary companies of a registered public-utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act of 1935 ("Act"). The amendment deletes six of the eight conditions to the rule and broadens the types of securities within the exemption. The amendment also clarifies the scope of the rule in certain minor respects. The amendment is intended to eliminate unnecessary regulatory burdens and paperwork associated with seeking Commission approval for routine financings by the public-utility subsidiaries of registered holding companies.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director, (202) 272-7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272-7676, Joanne C. Rutkowski, Senior Special Counsel, (202) 504-2267, or Brian P. Spires, Staff Attorney, (202) 272-7688, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is amending rule 52 (17 CFR 250.52) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) to delete certain of the conditions of the rule. Rule 52 exempts from prior Commission authorization under section 6(a) the issuance and sale of certain securities

by public-utility subsidiary companies of registered holding companies. Rule 52 as amended also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rule.

In a companion release published today in the *Federal Register*, the Commission is requesting comment, among other things, on a proposal to further amend rule 52 to exempt other types of securities, as well as certain financing transactions of nonutility subsidiary companies, from the requirement of prior Commission approval. The Commission is also requesting comment on a proposed amendment to rule 45(b)(4) that would complement rule 52, as further amended.¹

Background

The Commission promulgated rule 52 under sections 6(b) and 9(c)(3) of the Act in 1990.² As adopted, the rule exempts from the requirement of prior Commission authorization under section 6(a) the issuance and sale of certain securities by public-utility subsidiary companies of registered public-utility holding companies. The rule also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of securities issued by a public-utility subsidiary under the rule.³

Under the present rule, no prior authorization of the Commission is required if the financing transaction:

- (1) Is solely for the purpose of financing the business of the public-utility subsidiary company;
- (2) Has been expressly authorized by the state commission of the state in which the public-utility subsidiary company is organized and doing business;
- (3) Will not cause the capitalization of the public-utility subsidiary company or the holding company system to exceed certain specified debt limits or fall below certain common equity levels;
- (4) Involves the issue and sale of preferred stock, first mortgage bonds, or general and refunding mortgage bonds,

¹ Rule 45(b)(4) exempts capital contributions and open account advances, without interest, by a registered holding company to its subsidiary company, provided that no subsidiary will receive more than \$50,000 as a result of such transactions during any calendar year. The proposed amendment to rule 45(b)(4) would delete the \$50,000 limitation.

² See generally 45 SEC Docket 1577 (Apr. 3, 1990), 55 FR 11382 (Mar. 28, 1990) (adopting rule 52).

³ See generally *id.*