

Actions	Compliance	Procedures
<p>(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following:</p> <ul style="list-style-type: none"> <li>(i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD;.</li> <li>(ii) Incorporate this repair scheme; and .....</li> <li>(iii) The repair scheme will indicate whether or not you may raise the load factor limits.</li> </ul>	<p>Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.</p>	<p>In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, 1b Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.</p>
<p>(5) If no cracks are found during the initial inspection required in paragraph (d)(3) of this AD, you may raise load factor limits back to +6 &amp; -4.5 G's.</p>	<p>Prior to further flight after the initial inspection required in paragraph (d)(3) of this AD in which no cracks were found.</p>	<p>Not applicable.</p>

**Note 1:** The service information specified in paragraph (d)(3) of this AD is available on CD-ROM from the manufacturer. You may contact them at the address and phone number in paragraph (h) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

(2) Alternative methods of compliance approved in accordance with AD 98-12-10 and AD 99-21-23, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from APEX AIRCRAFT, 1 Route de Troyes, 21121

Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98-12-10, Amendment 39-10566 and AD 99-21-23, Amendment 39-11368.

**Note 3:** The subject of this AD is addressed in French AD Number 2001-616(A) R1, dated May 29, 2002.

Issued in Kansas City, Missouri, on June 25, 2002.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic Atmospheric Administration

#### 15 CFR Part 930

[Docket No. 020422093-2093]

RIN 0648-AP98

#### Procedural Changes to the Federal Consistency Process

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

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

**SUMMARY:** NOAA is evaluating whether limited and specific procedural changes or guidance to the existing Federal consistency regulations are needed to improve efficiencies in the Federal consistency procedures and Secretarial appeals process, particularly for energy development on the Outer Continental Shelf (OCS). This advance notice of proposed rulemaking requests public

comment on the need for limited and specific changes or guidance on what such changes or guidance should be.

**DATES:** Comments on this advance notice of proposed rulemaking must be received by September 3, 2002.

**ADDRESSES:** Address all comments regarding this advance notice of proposed rulemaking to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Attention: Federal Consistency Energy Review Comments.

**FOR FURTHER INFORMATION CONTACT:** David Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management, NOAA, 301-713-3155 ext. 144.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

For nearly 30 years the Coastal Zone Management Act (CZMA) has met the needs of coastal States and Territories (referred to as States), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. The CZMA requires States to adequately consider the national interest in the siting of energy facilities in the coastal zone through the development and implementation of their federally approved State Coastal Management Programs (CMPS). States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the

public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is considering whether limited modifications are needed to address the specific concerns discussed in this advance notice.

## **II. History of the CZMA and NOAA's Federal Consistency Regulations.**

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Once the Secretary of Commerce approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for federal approvals and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of federal actions over the years, States have concurred with approximately 93% of all federal actions reviewed. Thirty-five States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as "coastal States" or "States") are eligible to participate. Thirty-three of the eligible coastal States have federally approved CMPs. Indiana is developing a program and Illinois is not currently participating.

NOAA's Federal Consistency regulations, first promulgated in 1979, provide reliable procedures and predictability to the implementation of Federal Consistency. The regulations

operated well for the Federal and State agencies and permit applicants and provided a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 made clear that revisions to the regulations were needed.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, before proposing a rule in April 2000. NOAA evaluated comments on the proposed rule and published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency "effects test." Prior to the 1990 amendments, Federal agency activities "directly affecting" the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word "directly" to include projects with "effects" on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural efficiencies and processes and made changes based on long-standing interpretive practice by NOAA.

## **III. The Role of the CZMA in OCS Energy Development**

In February 2001, the Administration established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Group's Report (Energy Report) to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals

Management Service (MMS) within the Department of the Interior (DOI), are specifically mentioned. Energy Report at 5-7.

This advance notice is part of NOAA's evaluation of the Energy Report and NOAA's ongoing responsibility to address the national interest in effective coastal management. When States develop and amend their CMPs, and when making coastal management decisions, the CZMA requires State CMPs to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EPs) and Development and Production Plans (DPPs). Both statutes and their corresponding regulations provide a compatible and interrelated process for States to review EPs and DPPs. The Energy Report identifies potential lack of effectiveness in the CZMA-OCSLA interaction resulting from a lack of clearly defined requirements and information needs from Federal and State entities, as well as uncertain deadlines for completing the procedures of both statutes. Energy Report at 5-7.

The CZMA requires that when a lessee seeks MMS approval for its EP or DPP, the lessee must certify to the affected State(s) that activities covered in the plans are fully consistent with the enforceable policies of the State's CMP. If the State objects to the consistency certification, then MMS is prohibited from approving the activities described in detail in the EP or DPP. The lessee may appeal to the Secretary of Commerce to override the State objection and allow MMS to issue the approval. When deciding an appeal, the Secretary balances the national interest of the energy development against adverse effects on coastal resources and coastal uses. When MMS offers an OCS lease sale, it is considered a federal agency activity. If MMS determines that the lease sale will have reasonably foreseeable coastal effects, then MMS must provide a CZMA consistency determination to the affected State(s) stating whether the lease sale is "consistent to the maximum extent practicable" with the enforceable policies of the State's CMP. If the State objects, MMS may still proceed with the lease sale if MMS can show that it is

fully consistent or consistent to the maximum extent practicable.

There are several safeguards within the CZMA and NOAA's regulations to ensure that Federal requirements are met and that the national interest in the CZMA objectives is furthered. These safeguards are discussed below using OCS oil and gas activities to illustrate.

The "Effects Test." As discussed above, Federal Consistency review is triggered only when a federal action has reasonably foreseeable coastal effects, referred to as the "effects test." Consistency does NOT apply to everything a Federal agency, or a non-federal applicant for federal approvals, does in or near a coastal State.

For OCS oil and gas lease sales, MMS determines which States will be affected and provides only those States with a Consistency Determination. For example, in the Gulf of Mexico, MMS has established the Eastern Planning, Central Planning and Western Planning Areas. MMS usually finds that lease sales in the Central and Western Planning Areas will not have reasonably foreseeable effects on Florida coastal uses or resources (within the Eastern Planning Area) and does not provide Florida with a Consistency Determination.

For OCS EPs and DPPs the CZMA mandates, as a general matter, State consistency review. However, as with Federal agency activities, a coastal State's ability to review the Plans stops where coastal effects are not reasonably foreseeable. For example, in the Gulf of Mexico, Florida reviews OCS Plans in the Eastern Planning Area, and only reviews an OCS Plan in the Central Planning Area if effects to Florida's coastal uses or resources are reasonably foreseeable. Usually, an OCS oil and gas activity in the Central Planning Area will be beyond the point where the activity will affect Florida. The State of Texas (in the Western Planning Area) does not usually review an OCS oil and gas activity proposed for the Eastern Planning Area because coastal effects in Texas are not reasonably foreseeable.

Under the CZMA and NOAA's regulations, if Florida wanted to review OCS plans in the Central Planning Area, or if Texas wanted to review OCS plans in the Eastern Planning Area, they could, if NOAA approved, amend their CMP to describe an area within the particular Planning Area as a geographic location where the plans are subject to State review. Or, the States could request approval from NOAA on a case by case basis. In both cases, NOAA would approve only if the States could show that effects on their coastal uses or resources are reasonably foreseeable as

a result of an activity in the described geographic location.

*NOAA Approval of State CMPs.* NOAA, with substantial input from Federal agencies, local governments, industry, non-governmental organizations and the public, must approve State CMPs and their enforceable policies, including later changes to a State's CMP. For example, NOAA has denied State requests to include policies in its federally approved CMP that would prohibit all oil and gas development or facilities off its coast. NOAA has found that such policies conflict with the CZMA requirement that States consider the national interest in energy development and balance resource protection with coastal uses.

*Federal Agency Activities—  
"Consistent to the Maximum Extent Practicable and Fully Consistent."* For Federal agency activities under CZMA section 307(c)(1), such as the OCS Lease Sales, the Federal agency may proceed with the activity over a State's objection if the Federal agency is Consistent to the Maximum Extent Practicable with the enforceable policies of the State's CMP. This means that even if a State objects, MMS may proceed with an OCS lease sale if MMS provides to the State the reasons why the OCSLA requires MMS to proceed, despite inconsistency with the State. MMS could also proceed if it determined it was fully consistent. Under NOAA's regulations, the consistent to the maximum extent practicable standard also allows Federal agencies to deviate from State enforceable policies and CZMA procedures due to unforeseen circumstances and emergencies.

*Appeal to the Secretary of Commerce.* For non-federal applicants for federal approvals, such as OCS lessees, the applicant may appeal a State's objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The State's objection is overridden if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State's objection, then the Federal agency may issue its approval.

Since 1978, MMS has approved over 10,600 EPs and over 6,000 DPPs. States have concurred with nearly all of these plans. In the history of the CZMA, there have been only 15 instances where the oil and gas industry appealed a State's Federal Consistency objection to the Secretary of Commerce. Of those 15 cases (2 DPPs and 13 EPs), there were 7 decisions to override the State's objection, 7 decisions not to override

the State, and 1 decision pending. The record shows that energy development continues to occur, while reasonable State review ensures that the CZMA objectives have been met.

Since 1990, when the CZMA Federal Consistency provision was amended, there have been several OCS oil and gas lease sales by MMS and only one State objection. However, in that one case OCRM determined that the State's objection was not based on enforceable policies. Thus, all lease sales offered by MMS since 1990 have proceeded under the CZMA. In addition, since 1990, there have been six State objections to Exploration Plans. In three of those cases, the Secretary did not override the State's objection. In two of the cases the Secretary did override the State, and one case is still pending before the Secretary.

*Mediation.* While mediation is not technically a safeguard as those described above, it has been used to resolve Federal Consistency disputes and allowed Federal actions to proceed. In the event of a serious disagreement between a Federal agency and a State, either party may request that the Secretary of Commerce mediate the dispute. NOAA's regulations also provide for OCRM mediation to resolve disputes between States, Federal agencies, and others.

#### IV. Action Requested From the Public

Because of the thoroughness of NOAA's efforts during the recent revision of the Federal Consistency regulations, and the importance of the CZMA Federal Consistency provision to the State-Federal partnership, NOAA is not considering significant changes to the Federal Consistency regulations. However, the Energy Report and recent public interest in the energy industry has highlighted the need to evaluate whether NOAA should make procedural adjustments to improve efficiency in the administration of the Federal Consistency provision. Therefore, NOAA is considering limited regulatory changes or additional policy guidance that will further improve the operation of Federal Consistency.

NOAA is primarily addressing issues raised by the Energy Report which are related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities on the OCS. NOAA is particularly concerned that the various timing requirements of the OCSLA, CZMA and their applicable regulations can result in procedural delays or delayed information requests. Under the existing regulations, the Federal Consistency review period starts when

the State agency receives the applicant's consistency certification, the OCS plan, and the necessary data and information described in 15 CFR 930.58. The necessary data and information includes a detailed description of the activity, coastal effects, etc., and an evaluation relating the coastal effects to the enforceable policies of a State's CMP. This information is usually contained in the OCS plan and accompanying information. In addition, the necessary data and information can include information that is specifically identified in the State's CMP. NOAA's Federal Consistency regulations, 15 CFR 930.77(a)(2), specify the information available for the State's review of OCS oil and gas plans:

The State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (see 30 CFR 250.203 and 250.204) and OCS information program (see 30 CFR part 252) regulations and necessary data and information (see 15 CFR 930.58).

Despite this direction for information requirements, issues continue to arise as to the adequacy and types of information requested by and/or provided to the States. There are also instances where the State asks for additional information late in the CZMA review period. Frequently there is a time delay between the time a Federal agency or applicant for federal license or permit provides a coastal State with a consistency certification and the subsequent availability of routine environmental review documents such as National Environmental Policy Act (NEPA) compliance documents, reviews required under the Endangered Species Act (ESA) and related Clean Water Act (CWA) and/or Clean Air Act (CAA) reviews.

To address these and other procedural issues, NOAA seeks comments from the public concerning the following:

- Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

- Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.

- Whether there is a more effective way to coordinate the completion of

Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

- Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

- Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location" descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

- Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

Comments received by NOAA will help to determine its next steps, i.e., whether the Federal Consistency regulations should be amended to clarify data and information requirements in the State consistency review process or during the Secretarial appeal process or whether additional policy guidance on these and related issues is more appropriate. Any proposed changes to the Federal Consistency regulations would be published in the **Federal Register** following compliance with the Administrative Procedures Act and other relevant statutes and executive orders. Any proposed policy statement would be published in the **Federal Register**.

Dated: June 25, 2002.

**Jamison Hawkins,**

*Deputy, Assistant Administrator for Oceans and Coastal Zone Management.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[LA-49-1-7400; FRL-7240-1]

#### Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed approval.

**SUMMARY:** The EPA is proposing approval of a Vehicle Inspection and Maintenance (I/M) Program adopted by the State of Louisiana as part of the Louisiana SIP. This proposed action is taken under section 110 of the Clean Air Act as amended in 1990 (the Act).

**DATES:** Comments must be received on or before August 1, 2002.

**ADDRESSES:** Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency,  
Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700,  
Dallas, Texas 75202-2733

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana

Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7367.

#### SUPPLEMENTARY INFORMATION:

##### What Action Is EPA Taking Today?

We, the EPA, are proposing approval of Louisiana's I/M program.

##### What Are the Clean Air Act Requirements?

An I/M program is required in the Baton Rouge area because of its classification as a nonattainment area for ozone and the population exceeds 200,000. The SIP credits are not taken for the I/M plan in the 15% Rate-of-