eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order, because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 6:15 a.m. until 9:20 a.m. on January 30, 2005, in § 117.261, paragraph (nn) is suspended and a new paragraph (tt) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(tt) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw need not open from 6:15 a.m. until 9:20 a.m. on January 30, 2005. Public vessels of the United States and vessels in distress shall be passed at any time.

3. From 6:05 a.m. until 8:40 a.m. on January 30, 2005, in § 117.269, temporarily designate the existing regulatory text as paragraph (a); suspend paragraph (a); and add a new paragraph (b) to read as follows:

§ 117.269 Biscayne Bay.

* * * * *

(b) The draw of the east span of the Venetian Causeway bridge across Miami Beach Channel need not open from 6:05 a.m. to 8:40 a.m. on January 30, 2005. Public vessels of the United States and vessels in distress shall be passed at any time.

4. From 6:25 a.m. until 10 a.m. on Sunday, January 30, 2005, in § 117.305, paragraphs (c) and (d) are suspended and new paragraphs (e) and (f) are added to read as follows:

§ 117.305 Miami River.

* * * * *

(e) The draw of each bridge from the mouth of the Miami River, to and including the NW. 27th Avenue bridge, mile 3.7 at Miami, except the Miami Avenue and Brickell Avenue bridges, shall open on signal.

(f) The Miami Avenue bridge, across the Miami River, need not open from 6:25 a.m. to 10 a.m. on Sunday, January 30, 2005, and the Brickell Avenue bridge, across the Miami River, need not open from 7:10 a.m. to 12:05 p.m. on Sunday, January 30, 2005. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: November 17, 2004.

D. Brian Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 04–26339 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 330

RIN 0710–AA60

Nationwide Permit Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its nationwide permit regulations. We are proposing to modify the nationwide permit regulations so that district engineers can issue nationwide permit verification letters that expire on the same date the nationwide permit expires. This amendment will allow district engineers to issue that nationwide permit verifications are valid throughout the period of time the nationwide permit is in effect, to provide regulatory flexibility and efficiency. We are also proposing to increase the 30-day pre-construction notification review period to 45 days, to conform with nationwide permit general condition 13. Since the nationwide permit regulations were last amended in 1991, there have been changes to related

regulations and policies that have generally increased the complexity of reviews of nationwide permit pre-construction notifications. The 45-day pre-construction notification review period will provide district engineers with time to effectively review proposed nationwide permit activities that require notification, as well as compensatory mitigation proposals, to determine whether those activities meet the terms and conditions of the nationwide permits and result in minimal adverse environmental effects.

DATES: Submit comments on or before January 31, 2005.

ADDRESSES: Written comments should be sent to the U.S. Army Corps of Engineers, Attn: CECW–MVD (David B. Olson), 441 G Street NW., Washington, DC 20314–1000, or by e-mail to *david.b.olson@hq02.usace.army.mil.* Electronic comments should be submitted in ASCII format or portable document format to ensure that those comments can be read. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1991, (56 FR 59110) the U.S. Army Corps of Engineers Corps) revised 33 CFR part 330, the regulations for implementing its nationwide permit (NWP) program. Section 330.6(a)(3)(ii) of this regulation states that NWP verification letters can be valid for no more than two years. Section 330.1(e) provides district engineers with 30 days to review notifications to determine whether proposed NWP activities are in the public interest and result in minimal individual and cumulative adverse environmental effects. Since 1991, there have been substantial changes to the NWP program that warrant amendments to these provisions.

We are proposing to amend § 330.6(a)(3)(ii) to allow district engineers to issue NWP verification letters that expire on the same date the NWP expires. An NWP verification letter provides confirmation that a particular activity is authorized by NWP. This amendment will help promote administrative efficiency by eliminating the two year limit for NWP verification letters, so that it will not be necessary for district engineers to reverify an NWP authorization when the permittee has not completed the authorized work within two years. In many cases, a project proponent must obtain state and local authorizations before proceeding with a project. That process can take more than two years. We believe the flexibility and efficiency of the NWP Program would be improved if this regulation is modified to allow district engineers to issue NWP verification letters that expire at the same time the NWP expires. This will allow the NWP program to accommodate state and local planning and regulatory processes, without diminishing protection of the aquatic environment.

The two year limit for verification letters was intended to allow for adjustments or clarifications of jurisdiction, policy, and procedure. It has been our experience that we seldom need to change NWP verification letters between the date the verification letter is issued and the expiration date of the NWP. If such changes are necessary, district engineers may use the procedures at § 330.5(d) to modify, suspend, or revoke a case-specific NWP authorization. In most cases, the five year time limit for NWPs is adequate for accounting for changes in jurisdiction, policy, and procedure. District engineers will have the option of issuing NWP verification letters for shorter time periods, to address concerns for the aquatic environment or other public interest review factors.

We are also proposing to amend the NWP regulations to increase the pre-construction notification (PCN) review period from 30 days to 45 days. The purpose of the PCN review period, and the *de facto* authorization that results if the district engineer does not respond to a PCN during that review period, is to provide some regulatory certainty to the public by requiring district engineers to respond to NWP PCNs in a timely manner.

When we reissued NWP 26 on December 13, 1996, (61 FR 65874) we increased the PCN review period for proposed NWP 26 activities resulting in the loss of greater than one-third acre of waters of the United States from 30 days to 45 days. When we issued five new and six modified NWPs to replace NWP 26 on March 9, 2000, (65 FR 12818) we increased the review period for all proposed NWP activities that require PCNs to 45 days. The 45-day PCN review period was retained in the January 15, 2002, reissuance of the NWPs (67 FR 2020).

Since 1991, there have been new and modified Federal regulations that have affected the implementation of the NWP program, and increased the amount of time required to review PCNs. For example, the National Marine Fisheries Service (NMFS) issued regulations for implementing the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act that require consultation for activities that may adversely affect EFH. Current regulations for implementing the EFH provisions require Federal agencies to provide NMFS 30 days to respond to EFH Assessments (*see* 50 CFR 600.920).

There have also been changes to the Regulatory Program's compensatory mitigation policies, such as the issuance of Regulatory Guidance Letter 02–02 on December 24, 2002, and the issuance of Mitigation Action Plan items. Compensatory mitigation proposals can be complex documents that require technical review to determine whether the proposed compensatory mitigation projects are feasible and will effectively offset authorized losses of aquatic resources.

Prior to issuing NWP verification letters, district engineers review compensatory mitigation proposals to determine whether the proposed compensatory mitigation is sufficient to ensure that the authorized work will result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest factors. The 45-day review period would provide district engineers with time to effectively review compensatory mitigation proposals submitted with PCNs.

Amending the NWP regulations by increasing the 30-day PCN review period to 45 days will not adversely affect processing times for NWP verification requests. As discussed above, the 45-day PCN review period was adopted in 1996 for NWP 26, and was applied to all NWPs requiring PCNs in 2000. In FY 2003, the average processing time for an NWP verification request was 27 days. We believe that the average processing times for NWP verification requests will continue to be less than 30 days if the proposed rule change is adopted since the proposed modification reflects current NWP PCN processing practices.

We are also proposing to amend §§ 330.4(c)(6) and 330.4(d)(6) by replacing the 30-day review period with the proposed 45-day review period and replacing the term ''pre-discharge notification'' with ''pre-construction notification'' to be consistent with current terminology used in the NWP

program. The term ''pre-construction notification'' is more appropriate, since nationwide permits may authorize, in addition to discharges of dredged or fill material into waters of the United States, construction activities in navigable waters of the United States.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This proposed action will not impose any new information collection burden under the provisions of the Paperwork Production Act (44 U.S.C. 3501 *et seq.*). For NWPs that require PCNs, the proposed modification changes the 30-day review period to a 45-day review period. In addition, the proposed rule changes the length of time an NWP verification letter could be valid.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to, or for, a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires December 31, 2004). Since the proposed rule does not involve any additional collection of information from the public, this action is not subject to the Paperwork Reduction Act.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is not a ''significant regulatory action'' because it does not meet any of these four criteria. The proposed rule is a modification of existing procedures. For NWPs that require PCNs, the proposed rule increases the 30-day review period to 45 days. In addition, the proposed rule changes the length of time an NWP verification letter could be valid.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''policies that have Federalism implications'' is defined in the Executive Order to include regulations that 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.''

The proposed rule does not have Federalism implications. We do not believe that amending the regulation to increase the NWP PCN review period or increase the length of time an NWP verification letter may be valid will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose new substantive requirements. In addition, the proposed changes will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposed rule.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as : (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final

rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this proposed rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this proposed rule. Appropriate environmental documentation has been prepared for each NWP.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule updates regulations for implementing the Nationwide Permit Program. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 330

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

Dated: November 23, 2004.

Don T. Riley,

Major General, U.S. Army, Director of Civil Works.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 330 as follows:

PART 330—NATIONWIDE PERMIT PROGRAM

1. The authority citation for part 330 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 330.1 by revising paragraph (e)(1) to read as follows:

§ 330.1 Purpose and policy.

* * * * *

(e) * * * (1) In most cases, permittees may proceed with activities authorized by NWPs without notifying the DE. However, the prospective permittee should carefully review the language of the NWP to ascertain whether he must notify the DE prior to commencing the authorized activity. For NWPs requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity. The permittee may presume that his project qualifies for the NWP unless he is otherwise notified by the DE within a 45-day period. The 45-day period starts on the date of receipt of the notification in the Corps district office and ends 45 calendar days later regardless of weekends or holidays. If the DE notifies the prospective permittee that the notification is incomplete, a new 45-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 45-day period unless otherwise notified by the DE. If the DE fails to act within the 45-day period, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the NWP authorization.

* * * * *

3. Amend § 330.4 by revising paragraphs (c)(6) and (d)(6) to read as follows:

§ 330.4 Conditions, limitations, and restrictions.

* * * * *

(c) * * *

(6) In instances where a state has denied the 401 water quality certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWPs for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWPs. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (*see* 33 CFR 325.2(b)(1)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of such certification, the proposed work can be authorized under the NWP. For NWPs requiring a 45-day pre-construction notification the district engineer will immediately begin, and complete, his review prior to the state action on the individual section 401 water quality certification. If a state issues a conditioned individual 401 water quality certification for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP.

* * * * *

(d) * * *

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWPs requiring a 45-day pre-construction notification the DE will immediately begin, and may complete, his review prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's Federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a non-concurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

* * * * *

4. Amend § 330.6 by revising paragraph (a)(3)(ii) to read as follows:

§ 330.6 Authorization by nationwide permit.

(a) * * *

(3) * * *

(ii) The DE's response will state that the verification is valid for a specific period of time (generally until the expiration date of the NWP) unless the NWP authorization is modified, suspended, or revoked. The response should also include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.6(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP.

Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than the amount of time remaining until the expiration date of the NWP may be used if deemed appropriate.

* * * * *

[FR Doc. 04–26263 Filed 11–29–04; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0005; FRL–7838–2]

Approval and Promulgation of Air Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide Emissions From Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure, a revision to a plan submitted by Indiana concerning emissions of carbon monoxide (CO) and particulate matter