

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1216**

[Document Number AMS–SC–18–0103]

**Peanut Promotion, Research and Information Order; Continuance Referendum****AGENCY:** Agricultural Marketing Service, Agriculture.**ACTION:** Notification of referendum.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers of peanuts to determine whether they favor continuance of the Agricultural Marketing Service (AMS) regulations regarding a national peanut research and promotion program.

**DATES:** The referendum will be conducted from April 15 through May 3, 2019. The U.S. Department of Agriculture (Department) will provide the option for electronic balloting. Further details will be provided in the ballot instructions. Mail ballots must be postmarked by May 3, 2019. Ballots returned via express mail or electronic means must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on May 3, 2019.

**ADDRESSES:** Copies of the Peanut Promotion, Research and Information Order (Order) may be obtained from: Referendum Agent, Promotion and Economics Division (PED), Specialty Crops Program (SCP), AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, PED, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800; or electronic mail: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order (7 CFR part 1216) is favored by producers of peanuts covered under the program. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from June 1, 2017 through May 31, 2018. Persons who produced peanuts and

were subject to assessments during the representative period are eligible to vote. The referendum shall be conducted by regular U.S. mail or by electronic means from April 15 through May 3, 2019. The Department will provide the option for electronic balloting. Further details will be provided in the ballot instructions.

Section 518 of the 1996 Act (7 U.S.C. 7417) authorizes continuance referenda. Under section 1216.82 of the Order, the Department must conduct a referendum every five years or when 10 percent or more of the eligible peanut producers petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. The Department would continue the Order if continuance is approved by a simple majority of the producers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 7,000 producers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Jeanette Palmer and Heather Pichelman, PED, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures 7 CFR 1216.100 through 1216.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will distribute the ballots to be cast in the referendum and voting instructions by U.S. mail or through electronic means to all known producers prior to the first day of the voting period. Persons who produced peanuts and were subject to assessments during the representative period are eligible to vote. Any eligible producer who does not receive a ballot should contact a referendum agent as soon as possible. Ballots delivered to the Department via regular U.S. mail must be postmarked by May 3, 2019. Ballots delivered to the Department via express mail or electronic means must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on May 3, 2019.

**List of Subjects in 7 CFR Part 1216**

Administrative practice and procedure, Advertising, Consumer

information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

Dated: March 5, 2019.

**Erin Morris,**

*Associate Administrator.*

[FR Doc. 2019–04277 Filed 3–8–19; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 930**

[Docket No. 180215185–8185–01]

RIN 0648–BH78

**Procedural Changes to the Coastal Zone Management Act Federal Consistency Process**

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

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

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is issuing this advance notice of proposed rulemaking (ANPR) to seek the public and regulated community's input on what changes could be made to NOAA's Coastal Zone Management Act (CZMA) federal consistency regulations to make the federal consistency process more efficient across all stages of OCS oil and gas projects from leasing to development, as well as renewable energy projects. NOAA is also seeking comments on whether NOAA could process appeals in less time and increase the predictability in the outcome of an appeal. NOAA further invites comment on the potential costs that could be incurred by *small entities* during CZMA consistency appeals if NOAA revises the federal consistency regulations to provide greater efficiency and predictability as discussed in this Notice.

**DATES:** Comments on this ANPR must be received by April 25, 2019.

**ADDRESSES:** You may submit comments on this advance notice of proposed rulemaking (ANPR), identified by NOAA–NOS–2018–0107 by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit

comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter NOAA–NOS–2018–0107 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a comment” icon on the right of that line.

- *Mail:* Submit written comments to Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, 1305 East-West Highway, 10th Floor, N/OCM6, Silver Spring, MD 20910. Attention: CZMA Federal Consistency ANPR Comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NOAA. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Kaiser, Senior Policy Analyst, Office for Coastal Management, NOAA, at 603–862–2719, [david.kaiser@noaa.gov](mailto:david.kaiser@noaa.gov), or Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, at 240–533–0782, [kerry.kehoe@noaa.gov](mailto:kerry.kehoe@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Unless otherwise specified, the term “NOAA” refers to the Office for Coastal Management, within NOAA’s National Ocean Service. The Office for Coastal

Management formed in 2014 through the merger of the former Office of Ocean and Coastal Resource Management and the Coastal Services Center. Unless otherwise specified, the term “Secretary” refers to the Secretary of Commerce.

The Coastal Zone Management Act. The CZMA (16 U.S.C. 1451–1466) was enacted on October 27, 1972, to encourage coastal states, Great Lake states, and United States territories and commonwealths (collectively referred to as “coastal states” or “states”) to be proactive in managing the uses and resources of the coastal zone for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the uses and resources of the coastal zone and in the importance of balancing the competing uses of coastal resources. *See* 16 U.S.C. 1451. The CZMA established the National Coastal Zone Management Program, a voluntary program for states. If a state decides to participate in the program, it must develop and implement a comprehensive management program pursuant to federal requirements. *See* CZMA § 306(d) (16 U.S.C. 1455(d)); 15 CFR part 923. Of the thirty-five coastal states that are eligible to participate in the National Coastal Zone Management Program, thirty-four have federally-approved management programs. Alaska is currently not participating in the program.

Federal Consistency. The CZMA federal consistency provision is an important component of the National Coastal Zone Management Program and is a key incentive for states to join the Program. *See* CZMA § 307 (16 U.S.C. 1456) and NOAA’s regulations at 15 CFR part 930. Federal consistency is the CZMA provision that federal actions (inside or outside a state’s coastal zone) that have reasonably foreseeable effects on any land or water use or natural resource of the affected state’s coastal zone must be consistent with the enforceable policies of the affected

state’s federally approved CZMA program. *See* CZMA § 307 (16 U.S.C. 1456) and 15 CFR part 930. *See* NOAA’s federal consistency website for additional information, <https://www.coast.noaa.gov/czm/consistency/> (last visited February 6, 2019).

The CZMA and NOAA’s implementing regulations describe four types of federal actions for CZMA federal consistency purposes.

1. Federal agency activities and development projects (CZMA § 307(c)(1), (2); 15 CFR part 930, subpart C).
2. Federal license or permit activities (non-federal applicants) (CZMA § 307(c)(3)(A); 15 CFR part 930, subpart D).
3. Outer Continental Shelf exploration, development and production plans (similar to the procedures in subpart D) (CZMA § 307(c)(3)(B); 15 CFR part 930, subpart E).
4. Federal financial assistance to state or local agencies (CZMA § 307(d); 15 CFR part 930, subpart F).

It is important to understand that the applicable subparts of NOAA’s federal consistency regulations for these four categories of federal actions (subparts C, D, E, and F) differ with regard to: Terminology; who decides whether there are coastal effects; procedural timeframes and information requirements; standards of consistency (*i.e.*, “fully consistent” versus “consistent to the maximum extent practicable”); state objection requirements; and the consequences of state objections. Below is a table summarizing some of the key differences between subpart C (federal agency activities), subpart D (federal license or permit activities) and subpart E (OCS plans). Subparts D and E are similar in requirements. Note that subpart F is not discussed in detail in this ANPR as it has limited, or no, connection to renewable energy or OCS oil and gas projects.

	Activities by a Federal Agency (e.g., OCS Oil and Gas Lease Sales) (Subpart C)	Non-Federal Applicants for Federal Licenses or Permits (Subpart D) and OCS Plans (Subpart E)
Who decides whether there are coastal effects?	Federal agency decides whether there are coastal effects .....	State, with NOAA approval, decides whether there are coastal effects through “listing” and “unlisted” requirements for activities requiring federal authorization.
Who submits consistency determination or certification?	Federal agency submits consistency determination (CD) if coastal effects.	Applicant submits consistency certification (CC).

	Activities by a Federal Agency (e.g., OCS Oil and Gas Lease Sales) (Subpart C)	Non-Federal Applicants for Federal Licenses or Permits (Subpart D) and OCS Plans (Subpart E)
When is consistency determination or certification submitted?	Submitted at least 90 days before final action .....	Submitted with or after license or permit application to federal agency.
When does state review start?	Review starts when CD received (if complete) .....	Review starts when CC and “necessary data and information” received.
How long is the state review process?	State has 60 (plus 15) days to review. State and federal agency can agree to a shorter or longer review period.	State has 6 months to review (with 3-month status notice). State and applicant can agree to “stay” the 6-month review period for a specified time, after which the remainder of the 6-month review period applies.
What is the applicable federal consistency standard?	Activity must be “consistent to the maximum extent practicable” (i.e., fully consistent unless federal law prohibits full consistency) as determined by the federal agency.	Activity must be fully consistent as determined by the state.
What is the impact of the state’s response?	If state concurs or concurrence is presumed, federal agency may proceed. If state objects, federal agency can proceed over objection if consistent to the maximum extent practicable.	If state concurs or concurrence is presumed, federal agency may authorize the activity. If state objects, federal agency may not authorize the activity, unless Secretary of Commerce overrides state objection on appeal by the applicant.
Are there administrative or judicial processes available if a state objects?	There is no appeal to the Secretary of Commerce for federal agency activities. A state can challenge a federal agency’s decision to proceed over state objection in federal court and/or a state or federal agency can seek non-binding mediation through the Secretary of Commerce or NOAA. If state litigates federal agency decision to proceed and federal agency loses in federal court, the President may exempt the activity from CZMA compliance if it is in the paramount interest of the United States.	Applicant may appeal state objection to the Secretary of Commerce (delegated to NOAA) who can override or sustain the state objection. An applicant must file an appeal within 30 days of receipt of a state objection. Under CZMA statutory requirements and NOAA’s regulations, NOAA will issue a Secretarial CZMA appeal decision within 265–325 days from the filing of an appeal. The applicant or state can challenge the Secretary’s decision in federal court.

Federal Consistency Standards. In accordance with the CZMA and NOAA’s regulations at 15 CFR part 930, federal license or permit activities (subpart D), and OCS exploration plans, and development and production plans (subpart E) must be fully consistent with the enforceable policies of a state’s federally approved CZMA program. If the affected state objects to the proposed activity after concluding it is not fully consistent with the state’s enforceable policies, the federal agency may not authorize the activity unless the Secretary of Commerce overrides the state’s objection on appeal by the applicant. 16 U.S.C. 1456(c)(3).

For federal agency activities and development projects (subpart C), the “consistent to the maximum extent practicable” standard applies. When such activities are subject to federal consistency review, they shall be carried out in a manner that is consistent to the maximum extent practicable with the enforceable policies of a state’s federally approved CZMA program. 16 U.S.C. 1456(c)(1)(A). NOAA defines “consistent to the maximum extent practicable” at 15 CFR 930.32, which requires that federal agencies be “fully consistent” “unless full consistency is prohibited by existing law applicable to the Federal agency.” This determination

is made by the federal agency. In its 2000 and 2006 final rules, NOAA clarified how the “consistent to the maximum extent practicable” standard applies. The 2000 rule, in response to requests by Federal agencies, explained that Federal agencies can proceed over a state’s objection, due to an unforeseen circumstance or emergency, or when a Federal agency asserts, based on its own administrative decision record, it is fully consistent even if the state disagrees, or the requirements of other federal law prevent full consistency. *See* 65 FR 77123, 77133–34 and 77142–43 (Dec. 8, 2000), and 71 FR 787, 802 (comments 5 and 6) and 809 (comment 35) (Jan. 5, 2006). These two **Federal Register** documents are on NOAA’s website at: <https://www.coast.noaa.gov/czm/consistency/media/frfinal.pdf> and [https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05\\_06.pdf](https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05_06.pdf) (both last visited February 6, 2019).

Federal Consistency and the Outer Continental Shelf Lands Act (OCSLA). The CZMA is intertwined with the OCSLA’s oil and gas leasing and development program. The CZMA and its implementing regulations specifically describe how the CZMA federal consistency provisions apply to OCS oil and gas leasing, exploration,

and development. The OCSLA and its implementing regulations prohibit the Secretary of the Interior from permitting any activity provided in either an Exploration Plan, a Development and Production Plan, or a Development Operations and Coordination Document, unless the coastal state concurs or is conclusively presumed to concur with the CZMA consistency certification accompanying the plan. If the coastal state objects to the CZMA consistency certification, the Secretary of the Interior may still permit such activity if, on appeal by the applicant, the Secretary of Commerce finds that such activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. *See* 16 U.S.C. 1456(c)(3)(B)(iii); *see also* 43 U.S.C. 1340(c)(2), 1351(d) and (h). (A Development Operations and Coordination Document is the equivalent of a Development and Production Plan in the Western Gulf of Mexico.) The OCSLA expressly references the relevant sections of the CZMA.

Below is a brief description of how the CZMA applies to the four primary stages of OCS oil and gas activity. The four primary OCS oil and gas stages and the applicable subpart of NOAA’s regulations are: (1) National OCS Oil

and Gas Leasing Program (no CZMA review); (2) OCS Oil and Gas Lease Sale (subpart C); (3) Exploration Plan (subpart E); and (4) Development and Production Plan or Development Operations and Coordination Document (subpart E). Below is also a description of the various ways in which geological and geophysical seismic surveys may be subject to state CZMA review.

National OCS Oil and Gas Leasing Program (National OCS Program). CZMA federal consistency does not apply to the National OCS Program. The Bureau of Ocean Energy Management (BOEM), with NOAA's concurrence, determined that the National OCS Program is not a "proposal for action" under NOAA's CZMA regulations as a lease sale may not happen and any future coastal effects are too speculative at the National OCS Program stage. See 71 FR 787, 792 (Jan. 5, 2006), [https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05\\_06.pdf](https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05_06.pdf) (last visited February 6, 2019).

OCS Oil and Gas Lease Sale (16 U.S.C. 1456(c)(1); 15 CFR part 930, subpart C). An OCS oil and gas lease sale is a federal agency activity under CZMA § 307(c)(1) and subpart C of NOAA's regulations. If BOEM holds a lease sale, BOEM determines which states are affected and provides those states with a consistency determination for review and concurrence, objection, or presumed concurrence if there is no response within the regulatory timeframe. If a state objects to BOEM's consistency determination, BOEM can still proceed with the lease sale if BOEM determines it is "consistent to the maximum extent practicable" with the state's coastal management program. Because OCS oil and gas lease sales are subject to subpart C of the federal consistency regulations, there is no right of appeal to the Secretary of Commerce if a state objects to BOEM's consistency determination. Rather, BOEM may decide to proceed over the state's objection and hold a lease sale under the consistent to the maximum extent practicable standard if BOEM determines the lease sale: (1) Is fully consistent with the enforceable policies of the state's management program; or (2) BOEM is legally prohibited from being fully consistent. 15 CFR 930.43(d).

Once a lease sale is granted it gives the lessee the authority to conduct on-lease ancillary activities, such as geological and geophysical (G&G) seismic surveys on the lease blocks acquired. BOEM requires the submittal of an Exploration Plan for certain on-lease ancillary activities. These on-lease activities are considered as part of a state's CZMA review during the lease

sale or later during review of an Exploration Plan. A BOEM permit may be required for certain off-lease G&G surveys under 30 CFR part 551. An off-lease G&G survey is a survey that is not part of a lease sale or Exploration Plan. In these instances, states would not have the ability to review G&G surveys in a lease sale or Exploration Plan. However, as discussed further below, states may have the ability to review off-lease G&G survey activities as a federal license or permit activity in accordance with NOAA's regulations at 15 CFR part 930, subpart D.

Exploration Plan (16 U.S.C. 1456(c)(3)(B); 15 CFR part 930, subpart E). If an OCS oil and gas lessee decides to commence exploration on a lease, the lessee is required to propose an Exploration Plan to BOEM. Depending on the location of the proposed Exploration Plan, CZMA § 307(c)(3)(B) requires that the lessee/applicant submit a consistency certification to the affected state(s), through BOEM. If a state objects to a consistency certification for an Exploration Plan, BOEM cannot authorize exploration activities unless the applicant appeals the state objection to the Secretary of Commerce pursuant to 15 CFR part 930, subpart H and the Secretary overrides the state's CZMA objection. Alternatively, the state, applicant, and BOEM could reach an agreement such that the state would remove its objection, allowing BOEM to authorize exploration activities. This agreement could occur before or during an appeal.

Development and Production Plan or Development Operations and Coordination Document (16 U.S.C. 1456(c)(3)(B); 15 CFR part 930, subpart E, and 30 CFR part 550, subpart B). If a lessee completes its exploration activities and decides to extract oil and gas for production, it must provide BOEM with a Development and Production Plan or a Development Operations and Coordination Document (for the Western Gulf of Mexico). CZMA § 307(c)(3)(B) requires that the lessee/applicant submit a consistency certification to the affected state(s), through BOEM, for the Development and Production Plan or Development Operations and Coordination Document, just as it does for the Exploration Plan. Depending on the location of the development, one or more states will receive a consistency certification from the applicant, through BOEM. If a state objects to a consistency certification for a Development and Production Plan or Development Operations and Coordination Document, BOEM cannot authorize development and production unless the applicant appeals the state

objection to the Secretary of Commerce pursuant to 15 CFR part 930, subpart H and the Secretary overrides the state's CZMA objection. Alternatively, the state, applicant, and BOEM could reach an agreement such that the state would remove its objection, allowing BOEM to authorize exploration activities. This agreement could occur before or during an appeal.

Geological and Geophysical Permits for Off-lease Activities (16 U.S.C. 1456(c)(3)(A); 15 CFR part 930, subpart D and 30 CFR part 551). Off-lease G&G surveys, as well as those conducted on lands under lease to a third party, require a permit from BOEM under 30 CFR part 551. Off-lease G&G surveys are surveys that are not authorized by BOEM, or reviewed by states for federal consistency, as part of a lease sale or Exploration Plan. These G&G permit applications may be subject to the CZMA federal consistency process as a federal license or permit activity pursuant to NOAA's regulations at 15 CFR part 930, subpart D. A consistency certification is required for these off-lease G&G permits if the state has, pursuant to 15 CFR 930.53, (1) listed the G&G permits in the state's NOAA-approved federal consistency list, and (2) included a geographic location description in its coastal management program. If not, then a state would need to request NOAA approval to review off-lease G&G permit applications on a case-by-case basis as an unlisted activity under 15 CFR 930.54. If a state objects to a consistency certification for a G&G permit under 30 CFR part 551, BOEM cannot authorize the activity unless the applicant appeals the state objection to the Secretary of Commerce pursuant to 15 CFR part 930, subpart H and the Secretary overrides the state's CZMA objection. Alternatively, the state, applicant, and BOEM could reach an agreement such that the state would remove its objection, allowing BOEM to authorize exploration activities. This agreement could occur before or during an appeal.

Federal Consistency Appeal Process. The CZMA appeal process is available to non-federal applicants for federal license and permit activities (subpart D), OCS Exploration, Development and Production Plans (subpart E), and federal financial assistance (subpart F). The appeal process takes 265 to 325 days to complete. Congress added this timeframe to the CZMA in the Energy Policy Act of 2005, Pub. L. 109-58, and NOAA added the timeframe to NOAA's regulations at 15 CFR part 930, subpart H in NOAA's 2006 rulemaking, 71 FR 75864. Historically, state objections to Exploration Plans or Development and

Production Plans do not happen very often. As noted in NOAA's 2006 final rule:

Since 1978, [BOEM] has approved over 10,600 [Exploration Plans] and over 6,000 [Development and Production Plans]. States have concurred with nearly all of these plans. In the 30-year history of the CZMA, there have been only 18 instances where the offshore oil and gas industry appealed a State's federal consistency objection to the Secretary of Commerce. The Secretary issued a decision in 14 of those cases. The Secretary did not issue a decision for the other 4 OCS appeals because the appeals were withdrawn due to settlement negotiations between the State and applicant or a settlement agreement between the Federal Government and the oil companies involved in the projects. Of the 14 decisions (1 [Development and Production Plan] and 13 [Exploration Plans]), there were 7 decisions to override the State's objection and 7 decisions not to override the State.

71 FR 787, 791 (Jan 5, 2006). These numbers are still valid. The most recent Secretarial appeal of an OCS oil and gas plan was in 1999. See NOAA's CZMA appeal spreadsheet for more information on CZMA appeals at <https://www.coast.noaa.gov/czm/consistency/media/appealslist.pdf> (last visited February 6, 2019).

NOAA's 2006 Final Rule. NOAA revised its CZMA federal consistency regulations in 2006 to address concerns raised by the energy industry, particularly regarding OCS oil and gas, in response to the 2001 Vice President's Energy Policy Report, and the Energy Policy Act of 2005. The 2006 revision was finalized after close coordination with the Department of the Interior, the Department of Energy, and with substantial input by the energy industry and the coastal states. See NOAA's final rule published in the **Federal Register**, 71 FR 787 (Jan. 5, 2006), [https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05\\_06.pdf](https://www.coast.noaa.gov/czm/consistency/media/finalrulefedregjan05_06.pdf) (last visited February 6, 2019). NOAA's 2006 final rule removed uncertainties in various time frames in the regulations, provided an expedited and date-certain period for processing CZMA consistency appeals, and provided industry with greater transparency and predictability in the CZMA process. The CZMA Secretarial appeals process deadlines were mandated by amendments to the CZMA by the Energy Policy Act of 2005, amending 16 U.S.C. 1465 (appeals to the Secretary) and adding section 1466 (appeals relating to offshore mineral development). At that time, NOAA evaluated the rulemaking in the context of what changes could be made without statutory amendments.

## II. Action Requested From the Public

In accordance with Executive Order 13795, this Advance Notice of Proposed Rulemaking seeks the public and regulated community's input on what changes could be made to NOAA's CZMA federal consistency regulations at 15 CFR part 930 to make the consistency process more efficient across all stages of OCS oil and gas projects from leasing to development or renewable energy projects. Any input should be consistent with statutory provisions regarding the CZMA review of OCS oil and gas lease sales, Exploration Plans, Development and Production Plans, Development Operations and Coordination Documents, G&G permits, and appeals to the Secretary of Commerce. NOAA recommends that anyone providing input review NOAA's 2006 final rule discussed above. NOAA notes that addressing these questions could result in a proposed rule that includes numerous regulatory modifications that could also apply to other types of federal actions and not just renewable or non-renewable energy projects.

NOAA is interested in the public and regulated community responses to the following statements.

1. What changes could be made to NOAA's federal consistency regulations at 15 CFR part 930 that could streamline federal consistency reviews and provide industry with greater predictability when making large investments in offshore renewable and non-renewable energy development?

2. NOAA is seeking comments on whether and how NOAA could achieve greater efficiency to process an appeal in less time and increase predictability in the outcome of an appeal—while continuing to meet the requirements and purposes of the CZMA—by limiting the Secretary of Commerce's review of an appeal of a state's objection to an OCS oil and gas Development and Production Plan or Development Operations and Coordination Document, to information that the Secretary of Commerce had not previously considered in an appeal of an OCS oil and gas Exploration Plan for the same lease block.

In addition, NOAA requests any comment on the types of new information that may be produced at different stages of OCS oil and gas projects to provide an indication of what information may be relevant to subsequent appeals. For example, a state may object under the CZMA to an OCS oil and gas Exploration Plan and the applicant may then appeal the objection to the Secretary of Commerce and the Secretary could override the state's

objection. The applicant could then complete its exploration activities and then submit to BOEM a Development and Production Plan or Development Operations and Coordination Document and the state could again issue a CZMA objection. In this scenario, there may be a substantial amount of technical, environmental, safety, national interest, and alternative analysis information and review by BOEM, other federal agencies, the states, NOAA and Commerce for the Exploration Plan and for an appeal of a state CZMA objection to an Exploration Plan. This information may be similar or the same as that developed for an appeal of a state CZMA objection to the later Development and Production Plan or Development Operations and Coordination Document for the same lease block. Therefore, NOAA is seeking comment on whether, in such a situation, it is efficient and effective to use the Secretary's override of the Exploration Plan as a precedent and limit the Secretary's review of an appeal of a state's objection to an OCS oil and gas Development and Production Plan or Development Operations and Coordination Document to information and issues not previously considered by the Secretary when deciding an appeal regarding the OCS Exploration Plan.

3. When an applicant seeks Secretarial review of a state CZMA federal consistency objection, the CZMA requires the Secretary to collect appeal fees from the applicant. 16 U.S.C. 1456(i). The fees include an "application fee of not less than \$200 for minor appeals and not less than \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee." 16 U.S.C. 1456(i)(1). Under NOAA's regulations, an appeal involving a project valued in excess of \$1 million is considered major. 15 CFR 930.125(c).

In addition to the application fee, the Secretary is also directed to collect such other fees as are necessary to recover the full costs of administering and processing appeals of a state CZMA federal consistency objection. 16 U.S.C. 1456(i)(2)(A) and 15 CFR 930.126. However, if the Secretary waives the application fee for an applicant, the Secretary shall waive all other fees for the applicant. 16 U.S.C. 1456(i)(2)(B).

Under the Regulatory Flexibility Act (RFA), at a proposed rule stage NOAA must determine whether the rule, if adopted, would have a significant economic impact on a substantial number of small entities. The term "small entity" includes small businesses, small organizations, and

small governmental jurisdictions. State and federal agencies and private landowners are not small entities under the RFA.

NOAA has stated for past CZMA federal consistency rulemakings that the federal consistency process and appeals to the Secretary do not have a significant impact on small entities and anticipates the same finding would be reached for a proposed rule based upon this document. *See e.g.*, 65 FR 20270, 20280–81 (Apr. 14, 2000). However, NOAA invites comment on the potential costs that could be incurred by *small entities* during CZMA consistency appeals if NOAA revises the federal consistency regulations to provide greater efficiency and predictability as discussed in this document.

Comments submitted to NOAA will help us determine whether to propose changes to the CZMA federal consistency regulations. Any proposed changes to the federal consistency regulations would be published in the **Federal Register** as a proposed rule following compliance with the Administrative Procedures Act (5 U.S.C. 553) and other relevant statutes and executive orders.

This regulatory action is significant for purposes of Executive Order 12866.

Dated: March 1, 2019.

**Paul M. Scholz,**

*Chief Financial Officer/Chief Administrative Officer, National Ocean Service, National Oceanic and Atmospheric Administration.*

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**BILLING CODE P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910, 1915, 1917, 1918, and 1926

[Docket No. OSHA–2018–0008]

RIN 1218–AC99

#### Powered Industrial Trucks; Request for information

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for Information (RFI).

**SUMMARY:** OSHA requests information and comment on issues related to requirements in the standards on powered industrial trucks for general, maritime, and construction industries. OSHA is seeking information regarding the types, age, and usage of powered industrial trucks, maintenance and retrofitting of powered industrial trucks,

how to regulate older powered industrial trucks, the types of accidents and injuries associated with operation of powered industrial trucks, the costs and benefits of retrofitting powered industrial trucks with safety features, and the costs and benefits of all other components of a safety program, as well as various other issues. OSHA is also interested in understanding whether the differences between the standards for maritime, construction, and general industry are appropriate and effective for each specific industrial sector. OSHA will use the information received in response to this RFI to determine what action, if any, it may take to reduce regulatory burdens while maintaining worker safety.

**DATES:** Submit comments and additional material on or before June 10, 2019. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments and additional materials, identified by Docket No. OSHA–2018–0008, by any of the following methods:

*Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Facsimile:* OSHA allows facsimile transmission of comments and additional material that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (for example, studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. These attachments must identify clearly the commenter's name, the date of submission, the title of this RFI (Powered Industrial Trucks), and docket no. OSHA–2018–0008 so that the Docket Office can attach them to the appropriate document.

*Regular mail, express mail, hand delivery, or messenger (courier) service:* Submit comments and any additional material (for example, studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2018–0008 or RIN (1218–AC99), Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW,

Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency's name, the title of this RFI (Powered Industrial Trucks), and the docket no. OSHA–2018–0008. OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public and submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

*Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the above address. The <http://www.regulations.gov> index lists all documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

#### FOR FURTHER INFORMATION CONTACT:

*Press inquiries:* Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Lisa Long, Director, Office of Engineering Safety, OSHA Directorate of Standards and Guidance; telephone: (202) 693–2222; fax: (202) 693–1663; email: [long.lisa@dol.gov](mailto:long.lisa@dol.gov).

#### SUPPLEMENTARY INFORMATION:

*Copies of this Federal Register notice:* Electronic copies are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at <http://www.osha.gov>.

*References and Exhibits:* Documents referenced by OSHA in this RFI, other than OSHA standards and **Federal Register** notices, are in Docket No. OSHA–2018–0008 (powered industrial trucks; request for information). The docket is available at <http://www.regulations.gov>, the Federal