

time period without agreement from the applicant). NOAA makes this distinction because, as discussed in *Collier*, a consistency certification is central to the State's jurisdiction and authority under the statute to conduct a consistency review. Allowing necessary data and information to be submitted after the six-month period has begun provides flexibility to the State and applicant to remedy the submission of the necessary data and information during the six-month review.

Rule Change 13: § 930.63(d). The cross reference to 930.121(d) is incorrect. There is no 930.121(d). The reference should be to 930.121(c).

Rule Change 14: § 930.76(a) and (b) Submission of an OCS plan, necessary data and information and consistency certification. These proposed changes would address information requirements for OCS plans. The changes would provide a more specific list of the information required. Clean Air Act and Clean Water Act permits are not added to NOAA's regulations as these permits are already required to be "described in detail" in OCS plans and are covered under the State's review of the OCS plan. See 30 CFR 250.203(b)(4), 203(b)(19), 204(b)(8)(ii) and 204(b)(14). Thus, States should not review CWA and CAA permit applications independently of the OCS plan review.

While the status of the completion of NEPA documents is an issue raised by coastal States when performing consistency reviews, NOAA is not adding language requiring that NEPA documents be included as information necessary to start the six-month review period. A requirement that NEPA documents (draft or final) be completed prior to the start of the six-month review period would be incompatible with statutory requirements in the OCSLA. MMS must make its decision whether to approve an EP within 30 days of receipt of the EP. Within that 30-day period, MMS completes its Environmental Assessment (EA). Thus, to meet OCSLA requirements and not to delay the CZMA process, MMS submits the EP and accompanying information to the State within days of receipt of the EP. The six-month review period starts when the State receives that information. MMS sends the EA to the State when the EA is completed. Since the State receives the EA within a very short period (20–30 days) after the start of the six-month review period, there is no harm to the State and the CZMA process is not delayed unnecessarily.

For DPP's, where MMS prepares a new Environmental Impact Statement (EIS), there is additional time in the process and States, if they want a draft

EIS prior to starting the six-month consistency review process, can amend their programs, pursuant to 15 CFR 930.58(a)(2), to include draft EIS' and other information as data and information necessary to start the six-month review. States will not be able to amend their programs to require final EIS' for OCSLA purposes as part of the necessary data and information because the OCSLA requires MMS to approve or deny a DPP within 60 days after completion of the final EIS. See 43 U.S.C. 1351(h) and 30 CFR 250.204(l). This would not provide sufficient time for the CZMA process.

Paragraph (a) is proposed to be deleted and combined with (b) as (a) is redundant with (b), particularly (1) and (3).

Rule Change 15: § 930.77(a) Commencement of State agency review and public notice. This change would clarify when the State's consistency review period begins for OCS plans. The proposed changes would provide additional direction to States that the State's determination of whether the information provided by the person pursuant to 15 CFR 930.76 is complete, is not a substantive review. Instead, it is a "checklist" review to see if the OCS plan, description of the activity, the coastal effects, the evaluation of the State's enforceable policies, specific information described in the State's federally approved program, and information required by Interior's regulations are included in the submission to the State agency. If the items required by § 930.76 are included, then the six-month review starts. This review does not determine the *substantive adequacy* of the information. The adequacy of the information is a component of the State's substantive review which occurs during the six-month review period.

The proposed changes would also clarify that if the State wants to require additional information for its review of OCS plans, it must describe such information in its program, pursuant to § 930.58(a)(2).

This section would also be changed to address the circumstances where a State believes the information submitted pursuant to NOAA's regulations is insufficient (e.g., either the analysis was substantively inadequate, or that the OCS plan addresses new activities or effects not foreseen and for which information was not provided). In such a case a State may request additional information. The proposed change would require that such a request be made within the first three months of the six-month review period. A request for additional information does not stop,

stay or otherwise alter the six-month review period.

Rule Change 16: § 930.82 Amended OCS plans. To be consistent with § 930.76(c), this proposed change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for amended OCS plans.

Rule Change 17: § 930.85(c) Failure to comply substantially with an approved OCS plan. While this section existed prior to the 2000 rule revisions, NOAA proposes this change to more closely coordinate CZMA and OCSLA requirements. Under NOAA's regulations and the OCSLA program, it is MMS that determines whether a change to an OCS plan is "significant" and thus, whether the change requires CZMA Federal Consistency review. This determination should be the same for failure to substantially comply with an approved OCS plan. This change would be consistent with CZMA section 307(c)(3)(B), and in fact the language is taken directly from the statute. The previous language was developed in the 1979 regulations as a means of determining when a person has substantially failed to comply. However, the existing section has not been used and NOAA believes that such determinations should be made by MMS. Also, to be consistent with § 930.76(c), this change would clarify that it is Interior, not the person, that submits the consistency certification and information to the State for OCS plans.

Rule Change 18: § 930.121(c) Alternatives on appeal. This provision was amended in the 2000 rule to address "confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or [sic] when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal." 65 FR 77151 (December 8, 2000). Implementation of this change has prompted NOAA to propose several refinements in the language. The word "new" would be struck to clarify that all information submitted to the Secretary during the appeal may be considered in determining whether an alternative is reasonable and available. The word "submitted" would be substituted for the word "described" to reflect more accurately the manner in which information becomes part of the decision record of an appeal.

The last sentence has been proposed to make clear that the Secretary would not substitute the Secretary's judgement for that of the State in determining whether an alternative is consistent