



**Billing Code 3510-NK-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

15 CFR Part 922

RIN-0648-XF140

**Plan for Periodic Review of Regulations**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of plan for periodic review of regulations; request for comments.

**SUMMARY:** Regulatory Flexibility Act (RFA) section 610 requires that the NOAA Office of National Marine Sanctuaries (ONMS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how ONMS will perform this review and describes the regulation proposed for review during the current review-cycle.

**DATES:** Written comments must be received on or before May 15, 2017.

**ADDRESSES:** Comments may be submitted by:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2017-0001>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: 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 by NOAA. 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 (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily submitted by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that federal agencies take into account how their regulations affect “small entities,” including small businesses, small governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires federal agencies to review existing regulations. It requires that ONMS publish a plan in the *Federal Register* explaining how it will review existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981 must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that ONMS publish in the Federal Register a list of rules it will review during the succeeding 12 months. The list must

describe, explain the need for, provide the legal basis for the rules, as well as invite public comment on the rules.

In addition, section 605 of the RFA provides that, when a rule is promulgated, the head of an agency may certify to the Small Business Administration's Chief Counsel for Advocacy that a rule would not have a significant economic impact on a substantial number of small entities. Section 610 of the RFA requires review of these previously certified rules if the agency is aware of changed conditions that may mean that a certified rule now does have a significant impact.

### **Criteria for Review of Existing Regulations**

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, RFA section 610(b) establishes five factors that agencies will consider in reviewing existing regulations:

- (1) Whether the rule is still needed;
- (2) What type of complaints or comments were received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- (5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

## **Plan for Periodic Review of Rules**

ONMS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within 10 years of the year in which they were originally issued. During this same period, ONMS will also review other rules certified under RFA section 605 as not having significant impacts. ONMS will evaluate whether those rules now have a significant impact and therefore should be reviewed under RFA section 610. ONMS intends that it will conduct section 610 reviews on applicable regulations on an annual basis. ONMS will make RFA Section 610 review reports available at the following website: <http://sanctuaries.noaa.gov/library/alldocs.html>.

## **ONMS Regulation Requiring Review for 2017**

One rulemaking finalized in 2007 requires review under RFA section 610: “Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary”. RIN 0648-AT18. (72 FR 29208; May 24, 2007). ONMS issued this rule to supplement the State of California’s marine reserves implemented in the state waters of the sanctuary in 2001 to 2003. This rule implemented new marine zones only in the Federal waters of the sanctuary, extending from the offshore extent of state waters to the outer boundary. This federal action established two types of zones: marine reserves and marine conservation areas. All extractive activities (e.g., removal of any sanctuary resource) and injury to sanctuary resources are prohibited in all marine reserves. Commercial and recreational lobster fishing and recreational fishing for pelagic species are allowed within the marine conservation area, while all other extraction and injury are prohibited. This action established approximately 110.5 square

nautical miles of marine reserves and 1.7 square nautical miles of marine conservation area in the federal waters of the sanctuary.

ONMS invites comments on the Channel Islands National Marine Sanctuary marine reserves rule. ONMS plans to complete the RFA section 610 review of the regulation by May 24, 2017. Unless we publish a notice stating otherwise, ONMS will make the final report available at <http://sanctuaries.noaa.gov/library/alldocs.html>.

Dated: April 17, 2017.

John Armor,

Director,

Office of National Marine Sanctuaries

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