



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Silver Spring, MD 20910

OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH

JUN - 1 2011

Ms. Christine A. Erickson
Public Employees for Environmental Responsibility
2000 P Street, N.W. Suite 240
Washington, D.C. 20036

Dear Ms. Erickson:

This responds to Public Employees for Environmental Responsibility's (PEER) petition to the National Oceanic and Atmospheric Administration (NOAA), pursuant to 5 U.S.C. § 553(e). In its petition, PEER requests that NOAA amend the publication -- *Fundamentals of a Sea Grant Extension Program (Fundamentals)* -- related to the National Sea Grant College Program (Sea Grant Program). PEER seeks to amend the publication to allow recipients of grants under the Sea Grant Program to take positions on issues of public debate. For the reasons explained below, I am declining PEER's request.

Background

The National Sea Grant College Program Act (Act), 33 U.S.C. §§ 1121-1131, established NOAA's Sea Grant Program. The Act authorizes NOAA to provide grant assistance for activities that support elements of the Program.

Pursuant to that authority, NOAA provides grants to support Sea Grant Extension Programs at colleges and universities in coastal and Great Lakes states. The professionals engaged in these Programs (Extension Agents) in turn serve as a source of science-based information for the public on issues relevant to the marine and coastal environment.

The publication at issue, *Fundamentals of a Sea Grant Extension Program (Fundamentals)*, serves as a guide for Extension Agents, was produced by Cornell University, and is result of collaboration among staff at NOAA's Sea Grant Program, similar state programs, and state and private colleges and universities.

Analysis and Decision

As stated above, PEER has petitioned NOAA pursuant to 5 U.S.C. § 553(e) to amend the *Fundamentals* publication to allow Extension Agents to take positions on matters of public debate. Section 553(e) provides that agencies shall give interested parties the right to petition for the issuance, amendment or repeal of a "rule." A rule is defined as "the whole or a part of an



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agency statement of general or particular applicability and future effect,” i.e., a statement that imposes a binding legal requirement. 5 U.S.C. § 551(4); see *Cement Kiln Recycling Coalition v. Environmental Protection Agency*, 493 F.3d 207 (D.C. Cir. 2007). Section 553, however, does not apply to “a matter relating to agency . . . grants.” 5 U.S.C. § 553(a)(2); see *Humana of South Carolina v. Califano*, 590 F.2d 1070 (D.C. Cir. 1978); *National Wildlife Federation v. Snow*, 561 F.2d 227 (D.C. Cir. 1976); *National Women, Infants and Children Grocers Association v. Food and Nutrition Service*, 416 F. Supp.2d 92 (D.D.C. 2006).

Because the *Fundamentals* publication relates to a federal grant program, Section 553(e) does not provide an opportunity to petition NOAA to engage in rulemaking to amend it. Moreover, because the *Fundamentals* publication is guidance and not a binding legal requirement, it is not a “rule” that is subject to amendment pursuant to Section 553(e). Accordingly, for these reasons, I am denying PEER’s petition for rulemaking to amend the *Fundamentals* publication.

Sincerely,



Craig N. McLean
Acting Assistant Administrator