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Friday
June 24, 1983

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 417; Lemon Reg. 416, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period June 26–July 2, 1983, and increases the quantity of lemons that may be shipped during the period June 19–25, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective June 26, 1983, and the amendment is effective for the period June 19–25, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a pulbic meeting on July 6, 1982. The committee met again publicly on June 21, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. Section 910.717 is added as follows:

§ 910.717 Lemon regulation 417.

The quantity of lemons grown in California and Arizona which may be handled during the period June 26, 1983, through July 2, 1983, is established at 340,000 cartons.

2. Section 910.716 *Lemon Regulation 416* (48 FR 27716) is revised to read as follows:

§ 910.716 Lemon regulation 416.

The quantity of lemons grown in California and Arizona which may be handled during the period June 19, 1983, through June 25, 1983, is established at 375,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: June 23, 1983.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-17312 Filed 6-23-83; 11:35 am]
BILLING CODE 3410-02-M

7 CFR Parts 911, 918, 923, 925 and 930

Expenses and Rates of Assessment for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes assessment rates under Marketing Orders 911, 918, and 923 for the 1983–84 fiscal periods, under Marketing Order 925 for the 1982–83 fiscal period, and amends the approved 1982–83 budget for Marketing Order 930. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1983–March 31, 1984 (§§ 911.222 and 923 223); March 1, 1983–February 29, 1984 (§ 918.220); December 1, 1982–November 30, 1983 (§ 925.202); May 1, 1982–April 30, 1983 (§ 930.212).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F & V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Maketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities because they would not measurably affect costs for the directly regulated handlers.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. It is necessary to effectuate the declared policy of the Act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Parts 911, 918, 923, 925 and 930

Marketing agreements and orders, Florida, Limes, Peaches, Georgia, Cherries, Washington, Grapes, California.

Therefore, new §§ 911.222, 918.220, 923.223 and 925.202 are added and § 930.212 (47 FR 34351) is revised to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 911—LIMES GROWN IN FLORIDA

§ 911.222 Expenses and assessment rate.

Expenses of $383,000 by the Florida Lime Administrative Committee are authorized and an assessment rate of $0.30 per bushel of limes is established for the fiscal year ending March 31, 1984. Unexpended funds may be carried over as a reserve.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.220 Expenses and assessment rate.

Expenses of $19,983 by the Industry Committee are authorized and an assessment rate of $0.01 per bushel of peaches is established for the fiscal year ending February 29, 1984. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.223 Expenses and assessment rate.

Expenses of $54,982.75 by the Washington Cherry Marketing Committee are authorized and an assessment rate of $1.00 per ton of cherries is established for the fiscal year ending March 31, 1984. Unexpended funds may be carried over as a reserve.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHERN CALIFORNIA

§ 925.202 Expenses and assessment rate.

Expenses of $38,000 by the California Desert Grape Administrative Committee are authorized and an assessment rate of $0.004 per 22-pound container of grapes is established for the fiscal year ending November 30, 1983. Unexpended funds may be carried over as a reserve.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

§ 930.212 Expenses and assessment rate.

Expenses of $139,317.64 by the Cherry Administrative Board are authorized and an assessment rate of $1.05 per ton of cherries delivered for processing is established for the fiscal year ending April 30, 1983.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 21, 1983.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-17138 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 29

[Docket No. 83-26]

Adjustable-Rate Mortgages

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This document makes technical changes in the wording of the Adjustable-Rate Mortgage ("ARM") regulation adopted by the Office of the Comptroller of the Currency ("Office") and extends the period of time for banks with nonconforming programs to comply with the regulation. These actions are necessary to clarify the meaning of certain provisions and to assure that the intent of the Office is accurately reflected in the regulation. The intended effect of this amendment is to avoid ambiguity and confusion in interpreting and administering ARM programs under the regulation.

EFFECTIVE DATE: Effective June 24, 1983.

FOR FURTHER INFORMATION CONTACT: David Nebhut, Financial Economist, Economic and Policy Analysis Division, (202) 447–1924, Francis S. Rath, Attorney, or Jerome Edelstein, Attorney, Legal Advisory Services Division, (202) 447–1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY ANALYSIS: On March 7, 1983, the Office published in the **Federal Register** (48 FR 9506), a revised ARM regulation. Since enactment, the Office has become aware that certain provisions contain ambiguous wording. The Office is thus making the following wording changes to remove any ambiguity and assure that the provisions are interpreted in a manner which satisfies the intent of the Office.

1. *Prepayment Fees.* As stated in the preamble to the regulation, the Office intended to prohibit prepayment fees when a borrower makes a greater than required payment to avoid negative amortization. As adopted, 12 CFR 29.6 can be read to prohibit prepayment fees in loans which provide for periods of interest-only payments, but do not involve negative amortization.

The Office did not intend for § 29.6(a) to apply to loans with a period of interest-only payments that precede a period of scheduled amortization. The language of the regulation is being clarified accordingly.

2. *Disclosure of Index.* The ARM regulation provides that the index used to determine interest rate variations must be "readily available to and verifiable by the borrower * * *." 12 CFR 29.3. Further the borrower must be informed of the index and "at least one readily available source in which it is published." 12 CFR 29.7(a)(2). The Office, in enacting the regulation did not intend to limit such sources to printed sources. Under some circumstances, a telephone call may also satisfy the disclosure requirement. Consequently, the language of 12 CFR 29.7(a)(2) is being revised to reflect this.

3. *Transition Period.* The Office provided that banks with ARM programs permissible under the previous regulations, but impermissible under the

March 7, 1983 regulation would have 120 days to bring these programs into compliance. 12 CFR 29.8. The transition period was primarily designed so that banks with such programs would not have to change the programs until revisions to the Office's real estate lending regulations, which also govern these programs, were adopted. A notice of proposed rulemaking concerning the real estate lending regulations was published in the Federal Register on March 10, 1983 (48 FR 10068). However, a final regulation may not be adopted by the end of the 120-day transition period. Consequently, to avoid the possibility that banks may have to revise their ARM programs at the end of the 120-day period, only to change them again under the amended real estate lending regulations, the Office is extending the transition period until October 6, 1983.

Special Analyses

A regulatory flexibility analysis has not been prepared for this regulation because a notice of proposed rulemaking is not required by the Administrative Procedure Act.

The Office has determined that the regulation does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis will not be prepared on the grounds that the revision (1) will not have an annual effect on the economy of $100 million or more, (2) will not result in a major increase in the cost of bank operations or government supervision, nor is it likely to generate substantially higher payments for borrowers, and (3) will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

The rule has not been published for notice and comment and a thirty-day delayed effective date has not been established because such actions are impracticable, unnecessary, and contrary to the public interest. For the most part, the revisions alter the wording of the regulation to eliminate ambiguity about the meaning of certain provisions and the intent of the Office. Consequently notice and comment and delayed effectiveness are unnecessary. To the extent that the revisions extend the transition period under the ARM regulation, notice and comment and delayed effectiveness are impracticable and contrary to the public interest. Periods of notice and comment and delayed effectiveness would require that the 120-day transition period elapse before it could be extended. The result of this would be that national banks would have to terminate previously authorized mortgage programs, only to resume or revise them a short time later. It is this result that enactment of the revision is attempting to prevent.

Lists of Subjects in 12 CFR Part 29

National banks, Adjustable-rate mortgages.

PART 19—[AMENDED]

Accordingly, for the reasons set forth above, Part 29 is amended by revising § 29.6, 29.7(a)(2) and 29.8 as follows:

1. The authority citation for Part 29 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; and 12 U.S.C. 371.

2. By revising 12 CFR 29.6 as follows:

§ 29.6 Prepayment Fees.

Banks offering or purchasing adjustable-rate mortgage loans may impose fees for prepayments regardless of any state-law prohibitions of, or limitations on, such fees, which prohibitions or limitations are expressly preempted. For the purpose of this Part, prepayments shall not include: (a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or (b) principal payments in excess of those necessary to retire the outstanding debt over the remaining loan term at the then current interest rate that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

3. By revising 12 CFR 29.7(a)(2) as follows:

§ 29.7 Disclosure.

(a)* * *

(2) The index used and the name of at least one readily available source from which the index may be obtained and verified.

* * * * *

4. By revising 12 CFR 29.8 as follows:

§ 29.8 Transition rule.

If on the effective date of this rule a national bank has already made a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which would violate any of the provisions of this Part, the national bank may continue until October 6, 1983, to make loans or binding commitments to lend under the program before the program must be brought into conformity with all of the provisions of this Part.

Dated: June 20, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-17125 Filed 6-23-83; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0451]

Reserve Requirements of Depository Institutions; Ineligible Bankers' Acceptances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204)—to apply reserve requirements to bankers, acceptances ("BAs") that do not meet the criteria of section 13 of the Federal Reserve Act ("ineligible BAs") regardless of whether the instrument is discounted and resold by the depository institution that created it. Previously, an ineligible acceptance was regarded as reservable only if the institution that created it also discounted and resold it. The purpose of this amendment is to prevent the avoidance of reserve requirements through the use of third parties that would discount and resell an ineligible acceptance created by a depository institution.

EFFECTIVE DATE: June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625); or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act authorizes the Board to determine what types of obligations are reservable deposits (12 U.S.C. 461(a)). In addition, section 19(a) grants the Board authority to prescribe regulations necessary to prevent evasions of reserve requirements.

Agented ineligible BAs. Regulation D previously regarded an ineligible BA as a reservable liability only if it was created, discounted, and sold by the same depository institution. Some banks have recently entered into arrangements with brokers and other third parties that provide for the creation of an ineligible BA by the bank and the subsequent discount and resale by the third party. Since the bank creating the BA did not

discount and resell the acceptance, it previously was not required to maintain reserves against the BA. Similarly, if the third party that discounted and resold the BA pursuant to such an arrangement was a depository institution, it would not be subject to reserve requirements on the transaction since it did not create the BA.

The Board's proposal. The Board believed these arrangements serve only as a device to avoid reserve requirements under Regulation D. Accordingly, the Board proposed to amend Regulation D such that the creation of an ineligible BA that is outstanding results in a reservable deposit regardless of whether the depository institution that creates the BA subsequently discounts and sells it. 48 FR 5750 (Feb. 8, 1983). The Board specifically requested comment on whether reserve requirements should be applied *only* to agented BA transactions and how such agented arrangements could be identified. The Board also proposed that the amendment apply to outstanding ineligible BAs that were created after the announcement of the proposed amendment.

Discussion of comments. The Board received a total of 24 comments. Thirteen of the commenters favored the Board's proposal, ten commenters opposed the proposal, and one commenter expressed no opinion. The principal reason these commenters cited for supporting the proposal was the need to eliminate a "loophole" through which reserve requirements could be avoided.

Commenters opposed to the proposal gave the following reasons for their opposition: agented ineligible BAs offer a flexible and cost effective means by which depository institutions can respond to the short term credit needs of their customers (such as small businesses) and compete with the commercial paper market and with foreign banks in the international market; ineligible agented BAs do not threaten the safety and soundness of depository institutions because of the applicability of lending limits; the proposal will not enhance monetary policy objectives; and agented ineligible BAs afford the depository institution creating the BA an opportunity for fee income with no funding risk to the institution.

Four of the commenters suggested that if the proposal is adopted, it should not apply to all ineligible BAs, but only to certain agented ineligible BAs. However, none of the commenters indicated how an ineligible BA transaction subject to the proposal could be identified from an ineligible BA transaction not subject to the proposal. Indeed, two commenters in favor of the proposal specifically recognized that where the discounter or seller of a BA was different from the depository institution that created the BA, the Board would be unable to determine whether the discounting and sale occurred pursuant to a prearranged agented BA transaction.

Finally, five commenters stated that applying a final rule to outstanding ineligible BAs created after the announcement of the Board's proposal was inequitable because depository institutions could not discontinue the practice of agented ineligible BAs on such short notice and imposing reserve requirements on such agented ineligible BAs would have a ripple effect on the depository institution's business beyond the agented ineligible BAs it had outstanding.

After consideration of the issues raised by the commenters, the Board has determined to amend Regulation D such that an outstanding ineligible BA would be treated as a reservable liability regardless of whether the depository institution that created the ineligible BA subsequently discounts and sells it. Reserve requirements would not apply to an ineligible BA that the creating institution itself discounts and holds since, under current practices, such acceptances are not regarded as acceptances outstanding.

Application of reserve requirements to ineligible BAs that the creating bank does not also discount and sell will, as the commenters assert, raise the cost of this type of financing. However, since agented BAs are essentially identical to other ineligible BA transactions that are subject to reserve requirements, the Board has determined that agented ineligible BAs should also be subject to reserve requirements. In both transactions, the creating bank has the same obligation to pay the holder the face amount of the instrument at maturity. The account party (borrower) has the same obligation to pay the creating bank at maturity, and the beneficiary of the draft has received funds as soon as the BA is discounted (by the creating bank in the nonagented case and by the third party in the agented case). The third party, not a participant in the nonagented transaction, generally has exchanged assets (cash for the BA) by reselling the BA in the secondary market and has merely accommodated the creating bank (most likely for a fee) in providing proceeds from the sale of the BA to the beneficiary of the draft. Accordingly, the only purpose of structuring the transaction as an agented BA appears to be to avoid reserve requirements.

Since ineligible acceptances are regarded as close substitutes to bank CDs by investors and since the commercial activities that can be financed by ineligible acceptances are virtually indistinguishable from those financed by bank CDs, if agented ineligible acceptances were not reservable, control over bank managed liabilities and credit may well be loosened.

Agented ineligible BAs are not a riskless source of fee income for the depository institution creating the BA as suggested by some of the commenters. By creating a BA, the creating bank incurs an obligation to pay the holder the amount of the BA at maturity and acquires a corresponding claim against the account party. Thus, the creating bank assumes the risk of default of the account party. Further, there is no Federal limitation on the aggregate amount of agented ineligible BAs a depository institution may create.

The amendment makes reservable all ineligible BAs outstanding (that are not held in portfolio by the creating bank), regardless of whether the third party discount and sale occurred pursuant to a prearranged agented BA transaction. No commenter indicated how agented arrangements could be identified. The Board believes that where the discounter or sellers of a BA is different from the depository institution that created the BA, it will in many cases be difficult, if not impossible, to determine whether the discounting and sale of the BA has occurred pursuant to a prearranged agented BA transaction. Indeed, it is unlikely that a bank would create a BA and not be indirectly or directly involved in some way with its subsequent discount or resale.

The Board believes that good cause exists to make this amendment effective immediately. Such an action will minimize any market distortions that would likely result if the amendment did not apply to ineligible BAs issued for a period of time after adoption of the final rule. In addition, the Board's prior February announcement proposing the amendment put depository institutions on notice that the amendment would apply to outstanding ineligible BAs created after adoption of the final rule. However, in view of the concerns raised by the commenters regarding applying this amendment to outstanding ineligible BAs created after the announcement of the Board's proposal on February 1, 1983, but before final adoption of the rule, the Board has determined not to apply this amendment retroactively.

The impact of this proposal on small entities has been considered in accordance with section 604 of the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 604). Section 411 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320; 96 Stat. 1520) provides for an exemption from reserve requirements for the first $2.1 million in reservable liabilities at all depository institutions. The Board believes that its action would not add any reserve requirement burden to small depository institutions that have zero reserve requirements as a result of section 411 of the Garn-St Germain Act. In addition, small entities typically do not issue ineligible BAs. No new recordkeeping or reporting requirements will be imposed as a result of this action.

List of Subjects in 12 CFR Part 204

Banks, Banking, Currency, Penalties, Reporting and recordkeeping requirements.

PART 204—[AMENDED]

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board amends § 204.2 of Regulation D (12 CFR Part 204), effective June 20, 1983, by adding a new paragraph (a)(1)(viii) and by revising (c)(1)(ii) and (f)(1)(v) as follows:

§ 204.2 Definitions.

* * * * *

(a) * * *

(1) * * *

(viii) Any liability of a depository institution that arises from the creation after June 20, 1983, of a bankers' acceptance that is not of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372) except any such liability held for the account of an entity specified in § 204.2(a)(1)(vii)(A); or

* * * * *

(c) * * *

(1) * * *

(ii) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgement of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)); and

* * * * *

(f) * * *

(1) * * *

(v) A time deposit represented by a promissory note, an acknowledgement of advance, or a similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)).

* * * * *

By order of the Board of Governors, June 20, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-17066 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 250

[Docket No. R-0453]

Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has clarified the meaning of the seventh paragraph of section 13 of the Federal Reserve Act as amended by the Bank Export Services Act (Title II of Pub. L. 97–290) ("BESA"). This clarification covers the treatment of (1) participations in BAs that are created by institutions subject to such limitations of the BESA and sold to institutions not subject to such limitations, (2) participations in BAs that are created by institutions not subject to the limitations of the BESA and sold to institutions subject to such limitations, (3) the limitation on BAs growing out of domestic transactions, and (4) the dollar equivalent of the paid up capital and surplus of the foreign bank parent of U.S. branches and agencies subject to the limitations of the BESA.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452–3625), or Robert G. Ballen, Attorney (202/452–3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

The BESA

Section 207 of the BESA provides that a member bank or a Federal or State branch or agency in the United States whose parent foreign bank has, or is controlled by a foreign company or companies that have, more than $1 billion in total worldwide consolidated bank assets, may create eligible bankers' acceptances ("BAs")[1] in the aggregate up to 150 per cent of its paid up and unimpaired capital stock and surplus ("capital") and, with the permission of the Board, up to 200 per cent of its capital (12 U.S.C. 372). Section 207 also prohibits these institutions ("covered banks") from creating eligible BAs for any one person in the aggregate in excess of 10 per cent of the institution's capital. Eligible BAs growing out of domestic transactions may not exceed 50 per cent of the aggregate of all acceptances authorized for a covered bank.

Section 207 of the BESA also provides that any portion of an eligible BA created by a covered bank that is conveyed through a participation to another covered bank shall *not* be included in the calculation of the individual creating bank's BA limits. However, the amount of the participation *is* to be applied to the BA limits applicable to the covered bank receiving the participation.

For purposes of determining the BA limits applicable to U.S. branches and agencies of foreign banks, the statute provides that a branch's or agency's capital is to be calculated as the dollar equivalent of the capital of the parent foreign bank as determined by the Federal Reserve.

The Board's proposed interpretation.

The Board proposed for public comment in February a clarification of the meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by section 207 of the BESA. 48 FR 5570 (Feb. 7, 1983). Under the proposal, an eligible BA created by a covered bank that is conveyed through a participation to an institution that is not subject to the limitations of BESA would continue to be included in the limitations applicable to the creating covered bank. The Board proposed that since Edge Corporations, liked covered banks, are subject to separate per customer and aggregate BA limits, an eligible BA created by a covered bank that is conveyed through a participation to an Edge Corporation would be

[1] An eligible BA is a BA that meets the criteria of the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372).

included in the calculation of the limits applicable to the Edge Corporation and not in the calculation of the limits applicable to the creating covered bank. In addition, under the proposal, a participation conveyed to a covered bank from an institution not covered by the limitations of the BESA would be included in the calculation of the limits applicable to the receiving covered bank.

As to the application of the BESA limitations to U.S. branches and agencies of foreign banks, the Board proposed that the parent of a U.S. branch or agency of a foreign bank be the same as for reserve requirement purposes; that is the bank entity that owns the branch or agency most directly. The procedures currently used for purposes of reporting to the Board on the Annual Report of Foreign Banking Organizations, Form F.R. Y-7, were proposed to be used in the calculation of the BA limits applicable to U.S. branches and agencies of foreign banks. (The F.R. Y-7 generally requires financial statements prepared in accordance with local accounting practices and an explanation of the accounting terminology and the major features of the accounting standards.) Conversions to the dollar equivalent of the worldwide capital of the foreign bank would be made periodically.

Finally, the Board proposed that the 50 per cent limitation on eligible BAs that grow out of domestic transactions apply to the maximum permissible amount of eligible BAs (150 to 200 per cent of capital) that a covered bank could issue, regardless of the bank's amount of eligible BAs outstanding.

Discussion of Comments

The Board received a total of 29 comments. Comments were received from 14 depository institutions, 11 Reserve Banks, the Institute of Foreign Bankers, the American Bankers Association, the California Bankers Association, and the Bankers' Association for Foreign Trade. The commenters generally supported the Board's proposals.

Ten commenters suggested that an eligible BA created by a covered bank that is conveyed through a participation to an institution *not* subject to the limitations of the BESA should *not* be included in the calculation of the limits of the creating covered bank. These commenters argued that the Board's proposal to include such BAs in the creating covered bank's BA limits was not in accord with the purpose of the BESA to provide smaller banks with more flexibility in providing acceptance financing and restricted otherwise desirable efforts of covered banks to use participations in BAs to diversify risk.

After consideration of the comments, the Board continues to believe that the BESA permits a covered bank to exclude an eligible BA it has created from its BA limits if the BA is conveyed through a participation *only* to another *covered* bank.[3] This ensures that the total amount of eligible BAs that may be created by *all* covered banks does not exceed the limits established by Congress—150 or 200 per cent of the capital of all covered banks.[4] To conclude otherwise would permit covered banks to create eligible BAs without limit by selling participations to institutions not covered by the Act. In addition, this promotes the Congressional intent, at least with respect to covered banks, to "place all banks, foreign and domestic, on an equal footing and under the same legal requirements."[4] To conclude otherwise would provide an advantage to foreign banks by permitting covered banks to convey participations to foreign banks without limit while conveyance of participations to domestic covered banks would be limited to 150 or 200 per cent of the capital of the recipient domestic bank. Finally, this provision ensures that participations in eligible acceptances are not used as a device for avoidance of reserve requirements. To conclude otherwise would permit covered banks to avoid reserve requirements by creating an unlimited amount of reserve-free obligations by conveying participations in eligible BAs to institutions not covered by the Act.

In this regard, the Board also has determined that an eligible BA created by a covered bank that is conveyed through a participation to an Edge or Agreement Corporation should continue to be included in the calculation of the creating covered bank's BA limits, even though Edge and Agreement Corporations are subject to separate aggregate and per customer BA limits. First, Edge and Agreement Corporations are not specifically included within the BESA definition of a covered bank. Second, if an eligible BA created by a covered bank that is conveyed through a participation to an Edge or Agreement Corporation is excluded from the calculation of the creating covered bank's BA limits, it would seem to follow, as suggested by several of the commenters, that an eligible BA created by a covered bank that is conveyed through a participation to other institutions that are not covered banks under BESA but are otherwise subject to other BA limits should also be excluded from the calculation of the creating covered bank's BA limits. This would expand the exception to state nonmember depository institutions subject to BA limits pursuant to state law, certain U.S. branches and agencies of foreign banks whose foreign bank parent has less than $1 billion in total worldwide consolidated bank assets,[5] and perhaps other institutions such as foreign banks or domestic nonmember banks that voluntarily adopt appropriate BA limits. Such a result could undermine the BA limitations established by Congress and provide a device for avoidance of reserve requirements as discussed above. Finally, there is no evidence to suggest that Edge or Agreement Corporations are having difficulty creating their own BAs.[6] The BAs of these institutions generally are marketable on the strength of the name of their bank parent. Thus, special treatment of Edge or Agreement Corporations in this regard would not appear to further significantly the access of these institutions to acceptance financing, which was a primary purpose of BESA.

Eight of the twelve commenters that specifically commented upon the Board's proposal regarding the application of the BESA limits to U.S. branches and agencies supported the

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[3] Specifically, section 207 of the BESA states that, "with respect to an *institution* which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another *institution*" (emphasis added). The term "institution" is defined in the section as [a]ny member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978."

[4] 12 U.S.C. 372(7) (A), (B), (C), and (F).

[4] 128 *Cong. Rec.* H4647 (daily ed. July 27, 1982) (remarks of Rep. Barnard); 128 *Cong. Rec. H8461 (daily ed. October 1, 1982) (remarks of Rep. Barnard).*

[5] Federal branches and agencies of foreign banks whose parent has less than $1 billion in total worldwide consolidated bank assets are subject to the BA limitations of BESA pursuant to an interpretation of the Comptroller of the Currency (12 CFR 28.101(5)). State branches and agencies of foreign banks whose parent has less than $1 billion in total worldwide consolidated bank assets may be subject to comparable limits under state law.

[6] In this regard, an eligible BA that is created by an Edge or Agreement Corporation is not included in the BA limitations applicable to the Edge or Agreement Corporation if (1) the BA represents the international shipment of goods, and (2) the Edge or Agreement Corporation is fully covered by primary obligations to reimburse it that are also guaranteed by another bank or the Edge or Agreement Corporation has sold a participation to another bank. (12 CFR 211.8(a)). Under the Board's proposal, such a participation received by a covered bank would be included in the calculation of the covered bank's BA limits. A guarantee issued by a covered bank also would be included in the calculation of the BA limits of the covered bank.

Board's proposal in its entirety. However, two commenters suggested alternatives to the Board's proposed approach of calculating the foreign bank capital by using the same procedures as are currently used for purposes of reporting to the Board on the Annual Report of Foreign Banking Organizations, Form F.R. Y–7. (The F.R. Y–7 generally requires financial statements prepared in accordance with local accounting practices and an explanation of the accounting terminology and the major features of the accounting standards used in the preparation of the financial statements). One commenter suggested that the Board reference its determinations as to what constitutes member bank capital and specifically advise foreign banks as to which accounts may be used for purposes of the capital calculation. Another commenter suggested that the Board's capital computation include all those items of capital and surplus that any foreign bank would be permitted to include for purposes of lending limit computations in its home country.

After consideration of the comments, the Board has determined to adopt its proposed approach of calculating foreign bank capital using the same procedures as are currently used for purposes of reporting to the Board on the F.R. Y–7. The Board believes the first alternative of specifying the accounts to be included is too inflexible and complicated in view of the differences in the treatment of capital among countries. The second alternative of using the same definition that applies to the determination of local lending limits is similar to the approach proposed by the Board in that they both recognize the variations in the treatment of capital among countries. In view of the experience the Board has had in determining the capital of foreign parent banks based upon the F.R. Y–7 approach, the Board determined to adopt the proposed approach.

Three commenters disagreed with the proposed manner in which the effect of foreign exchange rate fluctuations would be taken into account in the calculation of the worldwide capital of the parent foreign bank. While these commenters indicated that they appreciated the Board's concern with the problem of foreign exchange fluctuations, these commenters preferred a rule (such as quarterly conversion to dollars) rather than the flexible case-by-case approach proposed by the Board. To accommodate the concerns of these commenters, the Board has determined that such conversions to the dollar equivalent of the worldwide capital of the foreign bank be made periodically, but in no event less frequently than quarterly.

Two commenters indicated that it may be difficult to determine the compliance of U.S. branches and agencies of the same foreign bank where the branches and agencies are located in more than one state. (The BESA requires that the BA activity of all branches and agencies of the same foreign bank be aggregated.) Accordingly, the Board has determined that each foreign bank is to be responsible for coordinating the BA activity of its U.S. branches and agencies (including the aggregation of such activity) and establish procedures that ensure that examiners will be able to determine compliance with the BESA limits.

With respect to the limitation on eligible BAs growing out of domestic transactions, all eight commenters that commented specifically on this aspect of the proposal supported the Board's proposal that this 50 per cent limitation apply to the maximum permissible amount of eligible BAs (150 or 200 per cent of capital), regardless of the bank's amount of eligible acceptances outstanding. Accordingly, the Board has adopted its proposal with regard to the BESA limitation on eligible BAs growing out of domestic transactions.

The impact of this proposal on small entities has been considered in accordance with section 604 of the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 604). The Board's clarification will provide small member banks that are covered by the BESA limitations with increased flexibility with regard to the usage of eligible BAs. No new recordkeeping or reporting requirements will be imposed as a result of this action.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

Pursuant to its authority under the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372), the Board of Governors amends 12 CFR Part 250—Miscellaneous Interpretations, effective July 20, 1983, by adding a new section 250.164 to read as follows:

§ 250.164 Bankers' acceptances.

(a) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97–290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be created by an individual member bank from 50 per cent (or 100 per cent with the permission of the Board) of its paid up and unimpaired capital stock and surplus ("capital") to 150 per cent (or 200 per cent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 per cent of the institution's capital. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105). The Board is clarifying the proper meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by the BESA.

(b)(1) This section of the BESA provides that any portion of an eligible BA created by an institution subject to the BA limitations contained therein ("covered bank") that is conveyed through a participation to another covered bank shall not be included in the calculation of the creating bank's BA limits. The amount of the participation is to be applied to the calculation of the BA limits applicable to the covered bank receiving the participation. Although a covered bank that has reached its 150 or 200 percent limit can continue to create eligible acceptances by conveying participations to other covered banks, Congress has in effect imposed an aggregate limit on the eligible acceptances that may be created by *all* covered banks equal to the sum of 150 or 200 percent of the capital of all covered banks.

(2) The Board has clarified that under the statute an eligible BA created by a covered bank that is conveyed through a participation to an institution that is *not* subject to the limitations of this section of the BESA continues to be included in the calculation of the limits applicable to the creating covered bank. This will ensure that the total amount of eligible BAs that may be created by covered banks does not exceed the limitations established by Congress. In addition, this ensures that participations in acceptances are not used as a device for the avoidance of reserve requirements. Finally, this promotes the Congressional intent, with respect to covered banks, that foreign and domestic banks be on an equal footing and under the same legal requirements.

(3) In addition, the amount of a participation received by a covered bank from an institution not covered by the limitations of the Act is to be included in the calculation of the limits applicable to the covered bank receiving the participation. This result is based upon the language of the statute which includes within a covered bank's limits on eligible BAs outstanding the amount

of participations received by the covered bank. This provision reflects Congressional intent that a covered bank not be obligated on eligible bankers' acceptances, and participations therein, for an amount in excess of 150 or 200 percent of the institution's capital.

(c) The statute also provides that eligible acceptances growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for covered banks. The Board has clarified that this 50 percent limitation is applicable to the maximum permissible amount of eligible BAs (150 or 200 percent of capital), regardless of the bank's amount of eligible acceptances outstanding. The statutory language prior to the BESA amendment made clear that covered banks could issue eligible acceptances growing out of domestic transactions up to 50 percent of the amount of the total permissible eligible acceptances the bank could issue. The legislative history of the BESA indicates no intent to change this domestic acceptance limitation.

(d) The statute also provides that for the purpose of the limitations applicable to U.S. branches and agencies of foreign banks, a branch's or agency's capital is to be calculated as the dollar equivalent of the capital stock and surplus of the parent foreign bank as determined by the Board. The Board has clarified that for purposes of calculating the BA limits applicable to U.S. branches and agencies of foreign banks, the identity of the parent foreign bank is generally the same as for reserve requirement purposes; that is, the bank entity that owns the branch or agency most directly. The Board has also clarified that the procedures currently used for purposes of reporting to the Board on the Annual Report of Foreign Banking Organizations, Form FR Y-7, are also to be used in the calculation of the acceptance limits applicable to U.S. branches and agencies of foreign banks. (The FR Y-7 generally requires financial statements prepared in accordance with local accounting practices and an explanation of the accounting terminology and the major features of the accounting standards used in the preparation of the financial statements.) Conversions to the dollar equivalent of the worldwide capital of the foreign bank should be made periodically, but in no event less frequently than quarterly. In this regard, the Board recognizes the need to be flexible in dealing with the effect of foreign exchange rate fluctuations on the calculation of the worldwide capital of the parent foreign bank. Each foreign bank is to be responsible for coordinating the BA activity of its U.S. branches and agencies (including the aggregation of such activity) and establishing procedures that ensure that examiners will be able readily to determine compliance with the BESA limits.

By order of the Board of Governors, June 20, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-17067 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 601

Employee Responsibilities and Conduct

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration ("FCA") is publishing a final rule which determines that certain financial interests of members of the Federal Farm Credit Board ("Federal Board") are too remote or too inconsequential to affect the integrity of the exercise of certain statutory duties and responsibilities by Federal Board members and that such interests are therefore exempt from the conflict of interest provisions contained in Title 18, United States Code, section 208(a).

EFFECTIVE DATE: July 24, 1983.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, D.C. 20578 (202) 755-2181.

SUPPLEMENTARY INFORMATION: On April 1, 1983, the Farm Credit Administration ("FCA") published a proposed regulation, 12 CFR 601.190, which determines that certain financial interests of members of the Federal Farm Credit Board ("Federal Board") are too remote or too inconsequential to affect the integrity of the exercise of certain statutory duties and responsibilities by Federal Board members and that such interests are therefore exempt from the requirements of Title 18, United States Code, section 208(a). (48 FR 13999). The regulation describes the procedure by which twelve Federal Board members are nominated by System institutions and appointed by the President and one is designated by the Secretary of Agriculture and explains that by reason of this procedure, Board members usually have a financial interest in the nature of loans, stock ownership, or otherwise, in one or more System institutions. The regulation states that Board members, in the performance of their functions, are required to act on matters which may have a direct and predictable effect on their financial interests in System institutions but that, pursuant to Title 18, United States Code, section 208(b)(2), such interests are deemed too remote or inconsequential to affect the integrity of the Federal Board members service. The regulation specifically provides that the exemption does not apply to a Federal Board member's participation in the consideration of any action which is directed at or specifically applicable to any System institution (or institution which supervises such institution) in which the Federal Board member has a financial interest.

The final regulation incorporates certain comments received by the Office of Government Ethics ("OGE"). The OGE recommended that the subject of a waiver should be actions which have a "direct and predictable effect" upon a Federal Board member's interest rather than actions which have an "indirect and remote effect" on such interests. The OGE believes this is the appropriate terminology to be used in a section 208(b) waiver. The OGE also made certain editorial suggestions which would conform the language of the final regulation to the recommended amendment. All the recommendations of the OGE were adopted. There were no other comments on the regulation.

List of Subjects in 12 CFR Part 601

Agriculture, Banks, banking, Conflict of interest, Ethics in government.

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

For the reasons set out in the preamble, Part 601 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as shown.

1. By adding § 601.190 Federal Farm Credit Board-Waiver to the table of sections for Part 601.

2. By adding a new § 601.190 to read as follows:

§ 601.190 Federal Farm Credit Board Waiver

Pursuant to Title V of the Act, 12 U.S.C. 2221 *et seq.*, twelve members of the Federal Farm Credit Board ("Federal Board") are appointed by the President taking into consideration nominations made by the Farm Credit System ("System") institutions and the thirteenth member is designated by the

Secretary of Agriculture. The individuals nominated by System institutions and/or appointed by the President or the member designated by the Secretary of Agriculture usually have a financial interest in the nature of stock ownership, loans, or otherwise in one or more System institutions. The Federal Board's responsibilities include such matters as establishing the general policy for the guidance of the Farm Credit Administration, approving necessary rules and regulations for the implementation of the Act, and supervising and directing the performance of the powers and duties of the Farm Credit Administration and the Governor which relate to matters of a broad and general supervisory, advisory, or policy nature. The Federal Board is specifically prohibited under the Act from operating in an administrative capacity. In the performance of the Federal Board's statutory functions, Federal Board members are required to act on matters which may have an effect on their financial interests in System institutions. For purposes of the Federal Board's consideration of matters of a general or policy nature which may have a direct and predictable effect upon the financial interests in a System institution of (a) a Federal Board member, (b) the member's spouse, minor children, partner, or organization in which the member is serving as an officer, director, trustee, partner or employee, or (c) any person or organization with whom the member is negotiating or has an arrangement concerning prospective employment, such interests are deemed, pursuant to 18 U.S.C. 208(b)(2), to be too remote or inconsequential to affect the integrity of a member's services. Therefore, action by a member on such matters will not be deemed to violate 18 U.S.C. 208(a). This waiver shall not extend to a member's participation in the consideration of any action by the Farm Credit Administration which is directed at or specifically applicable to any System institution (or institution which supervises such institution) in which a financial interest is held by a member or any other person or organization referred to in (b) or (c) of this section.

(Sec. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 83-17048 Filed 6-23-83; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9165]

Stihl, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a manufacturer and seller of power tools and its advertising agency, among other things, to cease representing that the Stihl 015 AV chain saw has been top-rated by a leading consumer publication; that power was one of the factors considered in the rating; and that Stihl chain saws start faster and run smoother than other chain saws. The order prohibits the companies from making false or unsubstantiated representations concerning the performance or durability of any power tool, and requires them to possess and rely upon a reasonable basis when making such claims. Further, the companies are barred from misrepresenting the purpose or conclusion of any test or evaluation, and are required to retain documentation for performance-related claims for a period of three years.

DATES: Complaint issued March 7, 1983. Decision and Order issued June 6, 1983.*

FOR FURTHER INFORMATION CONTACT: FTC/PA, James Skiles, Washington, D.C. 20580. (202) 724-1507

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1983, there was published in the **Federal Register**, 48 FR 11722, *correction*, 48 FR 14389 (April 4, 1983), a proposed consent agreement with analysis in the Matter of Stihl, Incorporated, a corporation, and Stuart Ford, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.170-30 Durability or permanence; § 13.175 Quality of product or service; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1715 Quality; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Advertising, Chain saws, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 83-17049 Filed 6-23-83; 8:45 am]

BILLING CODE 6750-01-M

* Copies of the Complaint and the Decision and Order filed with the original document.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Bankruptcy Provisions; Miscellaneous Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On March 1, 1983, the **Federal Register** published the Commission's new Part 190 which contains rules implementing the Bankruptcy Reform Act of 1978 insofar as that Act pertains to the liquidation of commodity brokers. (48 FR 8716-8755). Shortly thereafter, the Commission published in the **Federal Register** a second document concerning commodity broker bankruptices which deferred the effective date until June 30, 1983 of three of these Part 190 rules which imposed certain obligations on commodity brokers and contract markets. That second release also made certain technical changes. (48 FR 15122-23 (April 7, 1983)). By this release, the Commission is making additional technical changes and other

amendments to a small number of the Part 190 rules which primarily concern contract market responsibilities under these rules, the making or taking of deliveries in fulfillment of futures contracts involving a debtor commodity broker, and the disclosure of risk requirement. These changes either relieve existing obligations or clarify the scope of protections under the rules, and thus the amendments are being adopted as final rules, effective July 31, 1983. Because some of the amendments involve modifications to Rules 190.05(b) and 190.10(c), both of which were scheduled to become effective June 30, 1983, the Commission is also deferring the effective date of those rules until July 31.

EFFECTIVE DATE: Amendments and §§ 190.05(b) and 190.10(c) effective July 31, 1983.

FOR FURTHER INFORMATION CONTACT: Suzanne Ryder, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Discussion of Substantive Changes

Rule 190.05(c) provides a mechnism by which certain property which has been deposited prior to the entry of an order for relief with a debtor commodity broker in connection with the delivery of a futures contract or the exercise of an option contract which cannot be settled in cash, can be extracted from the estate and returned to the customer. Rules 190.01(kk) (3), (4), and (5) delimit what kinds of property are entitled to this treatment, and the conditions under which such property can be returned to a customer. In two parallel amendments to §§ 190.01(kk) (4) and (5), the Commission is expanding the time period during which such property deposited for delivery of a futures contract may be received by the debtor and still be eligible for the relief provided by Rule 190.05(c).

Prior to these amendments, such property was required to have been received by the debtor within a three-day period prior to the receipt of a notice of delivery. However, the Commission understands that, in anticipation of the consummation of a contract, some contract markets may call for the full purchase price to be paid for a futures contract that is in a delivery position at any time during the possible delivery period. The amendment adopted by the Commission therefore expands the time period during which certain cash or property deposited prior to bankruptcy and received by a debtor may be eligible for return to customers so long as the other conditions specified in §§ 190.01(kk) (4) and (5) are satisfied. In addition, the Commission has also measured the time period in business days to conform to other time periods used in the Part 190 rules.

The Commission has made conforming changes in those same rules to the language pertaining to cash or property deposited in connection with the exercise of an option to retain a parallel grammatical structure within each rule, but no substantive changes to the options provisions similar to that for futures is necessary because cash or property for the exercise of an option contract would only be deposited upon notice to exercise, and there are no contracts for which the notice period exceeds three days before the exercise date.

While broadening the time period in Rules 190.01(kk) (4) and (5) during which property may be received by the debtor for early return to a customer, the Commission is also amending the rules to make clear that property may be so extracted from the debtor's estate only if delivery or exercise actually occurs thereafter.[1] The reason for such a restriction is that the provision is intended to enable a customer to withdraw his property from the debtor's estate prior to a general distribution so as to effect delivery without having to pay twice. Thus, this mechanism permits a customer who has deposited cash or property with the debtor to effect delivery or exercise to extract it from the estate promptly so the transaction can be consummated outside the estate with as little interference with the process as possible. The requirement of actual delivery or exercise prevents a customer from obtaining such property in the absence of a general distribution only to subsequently default on the delivery contract.

If delivery or exercise does not occur although a customer has placed cash or property with the debtor for the purpose of delivery or exercise, such property would remain in the delivery account and, pursuant to Rule 190.08(c)(1), would be allocated to customers within the delivery account class to satisfy their claims upon distribution of customer property. Although such property would be distributed on a pro rata basis among claimants of the same class, as a practical matter, there would not be many other customer claims of the same type because of the small number of contracts which would be exercised or would result in delivery.[2] To ensure that property within a delivery account for which no delivery or exercise occurs will be allocated as described, the Commission has made a technical change to Rule 190.05(a)(2) which defines "delivery accounts."

The second change adopted by the Commission qualifies the general proscription in Rule 190.04(d)(2) against the trustee purchasing or selling new commodity contracts by specifically permitting the trustee to retender a delivery notice received by the debtor or trustee which is transferable if such retender is permissible under applicable contract market rules. This addition makes explicit a course of action which is implicitly permitted by Rule 190.05(a). That rule requires a trustee to "use his best efforts" to prevent property which is to be delivered, or for which delivery is being taken, in fulfillment of a futures contract which cannot be settled in cash from becoming part of the debtor's estate. The Commission believes the amendment is desirable to authorize this procedure explicitly and to underscore its availability to the trustee.

Pursuant to Rule 190.05(b) and in connection with the implementation of its regulatory scheme governing commodity broker bankruptcies, the Commission requires contract markets to adopt rules which provide a mechanism for effecting deliveries of a physical commodity outside the estate of a debtor with respect to futures or options contracts which are in a "delivery position," but where the cash or property required to settle the contract has not yet become a part of the debtor's estate. By amendment to that rule, the Commission is making clear that this requirement applies to only those futures or options contracts which cannot be settled in cash.[3]

This limitation is consistent with the other provisions pertaining to deliveries involving a debtor commodity broker. As the Commission earlier explained in its **Federal Register** release which accompanied the adoption of the final

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[1] *See* 48 FR 8716, 8731 (March 1, 1983).

[2] See discussion in **Federal Register** document adopting final rules as to how creation of delivery accounts mitigates dilution effect of pro rata provisions of the Bankruptcy Code. 48 FR at 8731, *id.*

[3] It is the Commission's view that as currently drafted, Rule 190.05(b) already applies only to such contracts since the rule provides that the contract market rules are to "permit the making and taking of delivery to fulill a commodity futures contract for a *physical commodity* or an option on a *physical commodity*, which has not become part of the debtor's estate on the date of the entry of the order for relief. . . ." (Emphasis added). 48 FR at 8744, *id.* However, because a question has been raised in this regard, the Commission wishes to further clarify the scope of this rule.

bankruptcy rules, there is no separation between settlement on the profit or loss gained or incurred on a futures or options contract and settlement on an underlying physical commodity with respect to a contract which can be settled in cash because settlement in such cases is generally effected by a final variation margin payment.[4] Consequently, because there is no distinct event which is the "delivery," a separate procedure for the settlement of a futures or option contract is not appropriate for such contracts. Because Rule 190.05(b) now explicitly excludes cash settlement contracts, it became necessary for the Commission to make a technical change to the proviso in § 190.05(b)(1) which continues to specify that customers are not relieved of their obligation to make or take delivery solely because delivery is to be made or taken from a commodity broker which is a debtor. Even though this amendment may narrow contract markets' rulemaking obligations under § 190.05(b), the Commission has determined to extend the effective date of this rule to thirty days following publication of this document in the **Federal Register** to ensure sufficient time for compliance.

The last set of changes in this rulemaking are to Rule 190.10(c) which prohibits a commodity broker from accepting customer non-cash margin unless the commodity broker first furnishes such customers with a risk disclosure statement explaining that, in the event of their broker's bankruptcy, customer property, including property specifically traceable to a particular customer, will be distributed to customers only to the extent of each customer's proportionate share of all property available for distribution to customers. The Commission believes the furnishing of this risk disclosure statement is necessary to provide fair notice to commodity customers that specifically identifiable property, like all customer property, will be subject to pro rata treatment in the liquidation of a commodity broker in bankruptcy.

However, the Commission also believes that certain adjustments to this provision are warranted. First, by use of the term "commodity broker" in § 190.10(c)(1), the Commission inadvertently included clearing organizations within the scope of this rule [5] and is now relieving them of thsi requirement.

Second, in response to inquiries as to whether the risk disclosure statement may be distributed to customers as part of the customer agreement, the Commission has determined that it may. This change has been incorporated in the rule which now permits the statement to be furnished as either a separate document or integrated into the customer agreement. However, the Commission wishes to reiterate that the disclosure need only be given to those customers who use non-cash margin. The Commission believes, therefore, that where only a few customers of a broker use non-cash margin, compliance may be achieved more readily by not incorporating the statement into the customer agreement but by furnishing a separate document. A specific acknowledgment by the customer that he has read the statement is still required to be obtained by the commodity broker, but where the risk disclosure statement is part of the customer agreement, the acknowledgment requirement is satisfied if the customer separately endorses the statement so long as a record is retained by the broker pursuant to § 190.10(c)(1)(ii). The Commission also wishes to make clear that the statement required by Rule 1.55,[6] describing certain risks involved in the trading of futures contracts, may be printed on the reverse side of the Rule 190.10(c) risk disclosure statement if separate endorsements are obtained with respect to each statement. Combining the two statements on the same side of a page, however, does not in the Commission's view constitute compliance with these provisions.

The Commission has modified the language of § 190.10(c) in one other respect, also in response to concerns expressed by the industry. In order to allay any concerns of customers that the furnishing of the risk disclosure statement has any implication for the financial condition of the broker, the Commission has added language to the rule indicating that there is no relationship between the broker's financial position and the furnishing of the statement. A final question has been raised as to the extent to which a commodity broker must seek the return of the acknowledgment with respect to current customers. The Commission believes that so long as a commodity broker furnishes the Rule 190.10(c) statement to existing customers and specifically requests an endorsement and its return, of which request a record is maintained, the broker has no further obligation in this regard.

As with Rule 190.05(b), the Commission is similarly deferring the effective date of Rule 190.10(c) until July 31, 1983, otherwise scheduled to become effective June 30, 1983, to provide sufficient time for compliance with the rule, as amended. Notwithstanding the revisions to Rule 190.10(c), the Commission wishes to make clear that any person who satisfies the provisions of the rule as drafted prior to today's amendments will be deemed to be in compliance therewith.

II. Related Matters

For good cause, the Commission finds that notice and opportunity for public comment on these rule amendments are unnecessary under the Administrative Procedure Act [7] because the changes are clarifications which are also in the nature of relief measures. The amendments to Rules 190.01(kk) (4) and (5) expand the time period during which special relief is available to certain persons; the amendment to Rule § 190.04(d)(2) specifically enumerates an alternative course of action available to the trustee which was previously implicit in the rules; the change to Rule 190.05(b) clarifies the more limited scope of contract markets' rulemaking obligations under that provision; and the revisions to rule 190.10(c) relieve clearing organizations of an inadvertent requirement to furnish the disclosure document and, for other persons still subject to the rule, provide an alternative basis for compliance. In addition, the two other rule amendments adopted in connection with the above amendments consist of conforming, non-substantive changes.

In adopting these rule amendments, the Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

III. Regulatory Flexibility Act

As the Commission has not published a prior general notice of proposed rulemaking with respect to these amendments which are relief measures, the amendments are not "rules" as that term is defined in Section 3(a) of the Regulatory Flexibility Act ("RFA"), Pub. L. No. 96-354, 94 Stat. 1165 (5 U.S.C. 601(2)).[8] Accordingly, the analysis or

[4] 48 FR at 8731, *id.*

[5] Rule 190.01(f) defines a "commodity broker" as a futures commission merchant, a "commodity options dealer," a "foreign futures commission merchant," a "clearing organization," and a "leverage transaction merchant," with respect to which there is a "customer," as those terms are defined in Rule 190.01. 48 FR at 8739, *id.*

[6] 17 CFR 1.55 (1982).

[7] 5 U.S.C. 553(b) (1976).

[8] That section defines the term "rules" as "any rule for which the agency publishes a general notice

certification specified in the RFA is not required.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812 *et. seq.* ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. 44 U.S.C. 3501 *et seq.* Because the amendments to the Part 190 rules adopted herein do not require any collection or submission of information within the meaning of the PRA, the requirements under that law are not applicable thereto.[9] OMB control number 3038-0021 has previously been assigned to those regulations within Part 190 which impose collection of information and recordkeeping requirements.[10]

List of Subjects in 17 CFR Part 190

Account class, Allocation, Bankruptcy, Clearing organization, Commodity broker, Contract, Commodity option, Customer claim, Debtor, Delivery, Delivery account, Liquidation, Margin, Notice, Open commodity contract, Option, Order for relief, Specifically identifiable property, Trustee.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983), and in particular sections 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 thereof, 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. No. 97-444) and pursuant to the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. No. 97-222, 96 Stat. 235 (1982), and in particular, sections 761-766 thereof, 11 U.S.C. 761-766 (Supp. V 1981 as amended by Pub. L. No. 97-222), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 190—BANKRUPTCY RULES

1. Section 190.01 is amended by revising paragraphs (kk) (4) and (5) to read as follows:

§ 190.01 Definitions.

* * * * *

(kk) * * *

(4) Any cash or other property deposited prior to the entry of the order for relief to pay for the taking of physical delivery on a long futures contract or for payment of the strike price upon exercise of a short put or a long call option contract on a physical commodity, which cannot be settled in cash, in excess of the amount necessary to margin such commodity contract prior to the notice date or exercise date, which cash or other property is identified on the books and records of the debtor as received from or for the account of a particular customer on or after three busines days before the first notice date or three business days before the exercise date specifically for the purpose of payment of the notice price upon taking delivery or the strike price upon exercise, respectively, and such customer takes delivery or exercises the option in accordance with the applicable contract market rules.

(5) The cash price tendered for any property deposited prior to the entry of the order for relief to make physical delivery on a short futures contract or for exercise of a long put or a short call option contract on a physical commodity, which cannot be settled in cash, to the extent it exceeds the amount necessary to margin such contract prior to the notice date or exercise date, which property is identified on the books and records of the debtor as received from or for the account of a particular customer on or after three business days before the first notice date or three business days before the exercise date specifically for the purpose of a delivery or exercise, respectively, and such customer makes delivery or exercises the option in accordance with the applicable contract market rules.

* * * * *

2. Section 190.04 is amended by revising paragraph (d)(2) to read as follows:

§ 190.04 Operation of the debtor's estate—general.

* * * * *

(d) * * *

(2) *Liquidation only.* Nothing in this Part shall be interpreted to permit the trustee to purchase or sell new commodity contracts for customers of the debtor except to offset open commodity contracts or to transfer any transferable notice received by the debtor or the trustee under any commodity contract: *Provided, however,* That the trustee may, in its discretion and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of price limits or other market conditions, or may take an offsetting position in a new month or at a strike price for which limits have not been reached.

* * * * *

3. Section 190.05 is amended by revising paragraphs (a)(2), the introductory text of paragraph (b), and (b)(1)(iii) to read as follows:

§ 190.05 Making and taking delivery on commodity contracts.

(a) * * *

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in §§ 190.01(kk) (3), (4), and (5), except that with respect to §§ 190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

* * * * *

(b) *Contract market rules for deliveries on behalf of a customer of a debtor.* Except in the case of a commodity futures or option contract which is settled in cash, each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with Section 5a(12) of the Act and § 1.41 of this chapter, which:

(1) * * *

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the payment for such physical commodity in any bankruptcy distribution: *Provided, however,* That a customer shall not be relieved of his obligation to make or take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and

* * * * *

4. Section 190.10 is amended by revising paragraphs (c)(1) and (2) to read as follows:

§ 190.10 General

* * * * *

(c) *Disclosure statement for non-cash margin.* (1) No commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer to margin,

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of proposed rulemaking pursuant to section 553(b) of this title. . . ."

[9] *See* 44 U.S.C. 3502(4) (Supp. V 1981) defining the term "collection of information."

[10] *See* 48 FR at 8738, n. 1 *supra.*

guarantee, or secure a commodity contract unless:

(i) The commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c) (2) of this section in boldfaced print in at least ten point type, which may be provided as either a separate, written document or incorporated into the customer agreement; and

(ii) The commodity broker receives an acknowledgment, signed and dated by the customer, that it has received and understood the statement, or if the statement is contained in the customer agreement, the customer separately endorses the page on which the statement appears, which acknowledgment or endorsement must be retained by the commodity broker for the greater of the period required in § 1.31 of this chapter or until the customer who executes such acknowledgment terminates or closes its account.

(2) The disclosure statement required by paragraph (c) (1) of this section is as follows:

THIS STATEMENT IS FURNISHED TO YOU BECAUSE RULE 190.10 (e) OF THE COMMODITY FUTURES TRADING COMMISSION REQUIRES IT FOR REASONS OF FAIR NOTICE UNRELATED TO THIS COMPANY'S CURRENT FINANCIAL CONDITION.

1. YOU SHOULD KNOW THAT IN THE UNLIKELY EVENT OF THIS COMPANY'S BANKRUPTCY, PROPERTY, INCLUDING PROPERTY SPECIFICALLY TRACEABLE TO YOU, WILL BE RETURNED, TRANSFERRED OR DISTRIBUTED TO YOU, OR ON YOUR BEHALF, ONLY TO THE EXTENT OF YOUR PRO RATA SHARE OF ALL PROPERTY AVAILABLE FOR DISTRIBUTION TO CUSTOMERS.
2. NOTICE CONCERNING THE TERMS FOR THE RETURN OF SPECIFICALLY IDENTIFIABLE PROPERTY WILL BE BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.
3. THE COMMISSION'S REGULATIONS CONCERNING BANKRUPTCIES OF COMMODITY BROKERS CAN BE FOUND AT 17 CODE OF FEDERAL REGULATIONS PART 190.

* * * * *

Issued in Washington, D.C. on June 17, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-16825 Filed 6-23-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. Rm 79-14]

Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

Issued: June 21, 1983.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION: Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of July 1983 is issued by the publication of a price table for the applicable month.

List of Subjects in 18 CFR Part 282.

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

CALENDAR YEAR 1980

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.889	1.915	1.929	1.943
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580

CALENDAR YEAR 1981

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$1.891	$1.908	$1.925	$1.942	$1.954	$1.967	$1.980	$1.990	$2.000	$2.010	$2.025	$2.041
NGPA Section 102 Threshold	2.667	2.698	2.729	2.761	2.787	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA Section 109 Threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130% of No. 2 Fuel Oil in New York City Threshold	7.610	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.660	8.700	8.930	8.990

CALENDAR YEAR 1982

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	$2.057	$2.071	$2.085	$2.099	$2.106	$2.113	$2.120	$2.129	$2.139	$2.149	$2.159	$2.169
NGPA Section 102 Threshold	3.003	3.033	3.063	3.093	3.112	3.132	3.152	3.176	3.200	3.224	3.249	3.274
NGPA Section 109 Threshold	2.128	2.143	2.158	2.173	2.180	2.187	2.194	2.204	2.214	2.224	2.234	2.244
130% of No. 2 Fuel Oil in New York City Threshold	9.180	9.340	9.470	9.340	9.280	8.000	8.170	8.670	8.660	08.950	8.640	8.890

CALENDAR YEAR 1983

	Jan.	Feb.	Mar.	Apr.	May	June	July					
Incremental Pricing Threshold	$2.179	$2.187	$2.195	$2.203	$2.214	$2.225	$2.236					
NGPA Section 102 Threshold	3.299	3.321	3.344	3.367	3.394	3.421	3.448					
NGPA Section 109 Threshold	2.254	2.262	2.270	2.278	2.289	2.300	2.311					
130% of No. 2 Fuel Oil in New York City Threshold	9.420	9.320	8.820	8.120	7.550	6.950	7.540					

[FR Doc. 83-17102 Filed 6-23-83; 8:45 am]
BILLING CODE 67617-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 177

[T.D. 83-141]

Foreign Railroad Equipment; Temporary Importations Under Bond

AGENCY: Customs Service, Treasury.

ACTION: Rule-related notice.

SUMMARY: This document advises the public of the procedures that Customs will follow in processing requests for duty-free entry of foreign railroad equipment imported temporarily into the United States to meet an emergency. Under the Tariff Schedules of the United States, locomotives and other railroad equipment may be brought temporarily into the United States for use in transportation other than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency. There must be an administrative finding that an emergency exists and that the temporary use of foreign railroad equipment is needed to overcome that emergency. This notice provides guidelines on the types of evidence that should be presented with a request for duty-free entry. This will enable Customs to reduce the time needed in deciding the request and to process these requests more efficiently.

EFFECTIVE DATE: June 24, 1983.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Under normal conditions, foreign railroad equipment in use on a continuous route crossing the border into the United States is considered to be an item of international traffic and shall be admitted without formal entry or the payment of duty.

However, when it is deemed necessary due to an emergency situation to use foreign railroad equipment between points in the United States, it is no longer considered an item of international traffic but still can be admitted temporarily free of duty under bond in accordance with the provisions of headnote 1, Subpart C, Part 5, Schedule 8, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This headnote provides that articles described in Subpart C, when not imparted for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within one (1) year from the date of importation. This period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial one (1) year, shall not exceed a total of three (3) years. Item 864.40, of Subpart C, Part 5, Schedule 8, TSUS, provides for duty-free entry for the following:

> Locomotives and other railroad equipment brought temporarily into the United States for use in clearing obstructions, fighting fires, or making emergency repairs on railroads within the United States, or for use in transportation otherwise than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency.

The provision which permits the duty-free entry of railroad equipment was added by section 4 of the Customs Administrative Act of 1938 (Customs Administrative Act of 1938, sec. 4, 52 Stat. 1079). The purpose was to allow the Secretary of the Treasury to permit the temporary entry of foreign railroad equipment to relieve acute congestions in rail traffic which cannot be cleared by available domestic equipment in time to prevent serious loss or suffering. See Hearings before the House Committee on Ways and Means on H.R. 6738, 75th Cong., 132 (1937).

By Treasury Department Order No. 165, Revised (T.D. 53654); Customs Delegation Order No. 1 (Revision 1) (T.D. 69-126), as amended by T.D. 72-41, T.D. 72-42, and T.D. 72-321, the authority delegated to the Secretary of the Treasury by the statute has been redelegated to the Director, Carriers, Drawback and Bonds Division, U.S. Customs Service. Section 177.2 Customs Regulations (19 CFR 177.2), contains the procedures for obtaining administrative rulings from Customs. Section 177.2(d) sets forth the information that would be needed to establish the fact of an emergency requiring immediate consideration. There must be an administrative finding that an emergency exists and that the temporary use of foreign railroad equipment is needed to overcome that emergency. The courts have held that an administrative decision must be supported by substantial evidence. *University of Miami* v. *U.S.*, 64 C.C.P.A. 174, 176 (1977) and *Yale University and Brown University* v. *U.S.*, 65 C.C.P.A. 97, 103, 104 (1977).

Requests for a Ruling on Item 864.40, TSUS

To reduce delay in the processing of requests for duty-free entry under these conditions, requests for a ruling on the applicability of item 864.40, TSUS, should provide the following information:

1. Name of Railroad and/or importer.
2. Ownership, type, and number of the items of railroad equipment to be imported.
3. Duration of importation period.
4. Evidence showing the existence of an emergency such as news reports.
5. Evidence that domestic equipment would not be available in time. This could be shown by unsuccessful and/or unsatisfied efforts to obtain sufficient equipment from other domestic railroads or from domestic railroad equipment manufacturers.

Because the statutory scheme to which these guidelines apply is triggered only by the occurence of an emergency, there have been few requests for exemption under the statute in recent years. For example, there were only two such requests during 1982. During 1981 there were five requests and during 1980 there were four requests. Accordingly, since these information collection guidelines contemplate that nine or fewer persons will apply for the duty-free exemption each year, they are not subject to the requirements of section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35).

While Customs will make every effort to expedite requests of an emergency nature, if there is no evidence on which to base an administrative decision, Customs has no other option than to make an independent investigation of the facts. That will necessarily add to the time for processing such a request. Consequently, it would be in the best interests of all parties to insure that accurate detailed evidence as to both the emergency and the basis for allowing duty-free entry of foreign railroad equipment to meet that emergency is presented with the request.

Authority

R.S. 251, as amended, sec. 624, 46 Stat. 759 Customs Administrative Act of 1938, sec. 4, 52 Stat. 1079, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624 (General Headnote 11, 12, Tariff Schedules of the United States)).

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 28, 1983.

Alfred R. De Angelus,

Acting Commissioner of Customs.

[FR Doc. 83-17024 Filed 6-23-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 75P-0322]

Canned Peas and Canned Dry Peas; Standards of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provision of the amended standard of identity for canned peas to reinstate magnesium hydroxide, magnesium oxide, and magnesium carbonate as optional ingredients. FDA is also confirming the effective date for compliance with the provision of the amended standard of identity for canned dry peas to exclude, by cross-reference, these compounds.

DATES: Effective May 10, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun August 31, 1982.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1983 (48 FR 15241), FDA issued a final regulation amending the standard of identity for canned peas to reinstate magnesium hydroxide, magnesium oxide, and magnesium carbonate as optional ingredients (21 CFR 155.170(a)(2)(xii)). FDA also amended the standard of identity for canned dry peas to exclude, by cross-reference, these compounds (21 CFR 155.172(a)(2)). Any person adversely affected by the regulation could have, at any time on or before May 9, 1983, filed written objections to the final regulation and requested a public hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

PART 155—CANNED VEGETABLES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the effective date for compliance with the standards of identity for canned peas (21 CFR 155.170) and, by cross-reference, canned dry peas (21 CFR 155.172) as amended in the **Federal Register** of April 8, 1983 (48 FR 15241), is May 10, 1983. Voluntary compliance may have begun August 31, 1982.

Dated: June 17, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-16818 Filed 6-23-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510, 524, and 558

Nitrofurazone and Furazolidone for Animal Use; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect changes of sponsor for several new animal drug applications (NADA's). The NADA's were transferred from Norwich-Eaton Pharmaceuticals to SmithKline Animal Health Products and to Norden Laboratories, Inc. SmithKline submitted supplemental NADA's that provide for the changes. Additionally, the regulations are amended by revising the designation and address of SmithKline Animal Health Products.

EFFECTIVE DATE: June 24, 1983.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Bureau of Veterinary Medicine (HFV-145), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, has informed the FDA that NADA 6-475, NADA 8-989, NADA 9-393, NADA 9-415, NADA 13-805, and NADA 32-319 have been transferred from Norwich-Eaton Pharmaceuticals to SmithKline Beckman Corp.

SmithKline stated that several of the NADA's are to be sponsored by SmithKline Animal Health Products and the others will be sponsored by Norden Laboratories, Inc., Lincoln, NE 68501, a wholly owned subsidiary of SmithKline Beckman Corp. SmithKline Animal Health Products and Norden Laboratories submitted supplements to each transferred NADA providing for the changes. Several of the NADA's are codified in the animal drug regulations which are hereby amended to identify the new sponsor. Under the Bureau of Veterinary Medicine's supplemental approval policy (see 42 FR 64367; December 23, 1977), this is a Category I change which does not require reevaluation of the safety and effectiveness data in the parent applications. Additionally, the regulations are amended to revise the designation and address of SmithKline Animal Health Products.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs, topical.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by revising the entry for SmithKline Animal Health Products in paragraph (c) (1) and (2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380	000007
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
000007	SmithKline Animal Health Products, Division of SmithKline, Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380.
* * * * *	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.1005 [Amended]

2. In Part 524, § 524.1005 *Furazolidone aerosol powder* is amended in paragraph (b) by removing the number "000149" and inserting in its place the number "000007."

§ 524.1580b [Amended]

3. In Part 524, § 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the number "000149" and inserting in its place the number "011519."

§ 524.1580c [Amended]

4. In Part 524, § 524.1580c *Nitrofurazone soluble powder* is amended in paragraph (b) by removing the number "000149" and inserting in its place the number "011519."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.15 [Amended]

5. In Part 558, § 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraph (g) (1) and (2) by revising the entries that identify "Norwich-Eaton Pharmaceuticals" as a sponsor for nitrofurazone and for furazolidone to read "SmithKline Animal Health Products."

Effective date: June 24, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 15, 1983.

Max L. Crandall,

Associate Director for Surveillance and Compliance.

[FR Doc. 83-16751 Filed 6-23-83; 8:45 am]

BILLING CODE 4160-01-M

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1303

Revision of Board's Rules Pertaining to National Security Information

AGENCY: Board for International Broadcasting.

ACTION: Final rule.

SUMMARY: On May 20, 1983 there were published on page 22749 of the **Federal Register** proposed regulations to implement Executive Order 12356 relating to national security information. Public comment on the proposed regulations was invited through June 17, 1983. Inasmuch as no public comment has been received, the proposed regulations are hereby adopted without change as of June 20, 1983.

EFFECTIVE DATE: June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur D. Levin (202) 254-804.

Walter R. Roberts,

Executive Director.

List of Subjects in 22 CFR Part 1303

National security information regulations.

Sections 1303.1, 1303.2 and paragraph (a) of 1303.3 of Chapter 13 of Title 22 of the Code of Federal Regulations are revised to read as follows:

PART 1303—SECURITY INFORMATION REGULATIONS

§ 1303.1 Policy.

It is the policy of the Board for International Broadcasting (BIB) to act in accordance with Executive Order 12356 in matters relating to national security information.

§ 1303.2 Program.

The Executive Director is designated as the BIB's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions and complaints regarding all elements of this program, and is solely responsible for changes to it and for ensuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the BIB's official contact for requests for declassification of materials submitted under the provisions of executive Order 12356, regardless of the point or origin of such requests. He is responsible for ensuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

§ 1303.3 Procedures.

(a) Mandatory Declassification Review.

Requests for mandatory review of national security information shall be in writing and addressed to the Executive Director, Board for International Broadcasting, Suite 1100, 1201 Connecticut Avenue, NW., Washington, D.C. 20036. The request should describe the document or material containing the information with sufficient specificity to enable the Board's personnel to locate it with a reasonable amount of effort. In light of the fact that the BIB does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director shall refer all requests for national security information in its custody to the Federal agency that classified it for review and disposition in accordance with Executive Order 12356 and that agency's regulations and guidelines.

* * * * *

(Executive Order 12356)

[FR Doc. 83-16900 Filed 6-23-83; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 235

[Docket No. R-83-991]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation; Providing Information to Mortgagor

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This document makes final an interim rule published on August 3, 1982, concerning two changes to HUD rules on annual mortgagee notices to mortgagors in HUD's single family mortgage insurance programs. The first reduces the number of days (from 60 to 30) in which a mortgagee must furnish statements of interest paid and taxes disbursed from escrow during the preceding calendar year. The second change concerns notice requirements to mortgagors under HUD's homeownership mortgage insurance and assistance payments program. This change requires the mortgagee to caution the mortgagor that IRS regulations limit the amount of deductions available to the mortgagor. It further recommends that the mortgagor seek competent State and local tax advice. Both changes are intended to benefit individual mortgagors, and to align HUD reporting requirements with those existing in the private sector.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication. Notice of the effective date of this final rule will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9180, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-8680. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 3, 1982, the Department published an interim rule (47 FR 33495), which contained two amendments to rules relating to mortgagee notice requirements to mortgagors in HUD's single family mortgage insurance programs. The first revised § 203.508(c) to require mortgagees to furnish mortgagors with statements of interest paid and taxes disbursed from escrow within thirty days after the end of each calendar year. In the past, mortgagees had been required to furnish mortgagors with these statements within sixty days of the end of each calendar year. The second change added a new § 235.1001 to Part 235, Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation. As published on August 3, this section required the mortgagee to include in the statements of interest and taxes paid a statement of the total Part 235 assistance payments made on the mortgagor's behalf by HUD during the year. The provision also advised the mortgagor that he or she should contact the appropriate taxing authority for guidance as to the amount of interest that can be claimed as a deduction on his or her income tax returns. This document makes final the interim rule.

Two comments were received on the interim rule. The following is a summary of the comments and the changes made to the interim rule.

Section 203.508(c). Neither commenter objected to the reduction of the time period within which mortgagees must provide annual statements of taxes and interest. The final rule is the same as the interim rule.

Section 235.1001. One commenter questioned the provision which required the mortgagee to direct the mortgagor to contact taxing authorities to determine the amount of interest which can be claimed as a deduction on his/her income tax returns. This commenter urged that § 235.1001 be revised to include a reference to IRS regulation 1.163-1 entitled, *Interest deductions in general,* and to include a warning to the mortgagor that the allowable mortgage interest deduction on his or her Federal income tax return is limited to the amount the mortgagor actually paid during the year.

The Department concurs that each mortgagor should be provided with more precise guidance as to what interest is deductible on his or her Federal income tax return than was provided in the interim rule. Thus, the final rule requires the mortgagee's accounting of the total amount of assistance payments paid by the Secretary and applied to the mortgagor's account during the preceding year to be provided in a manner which indicates (or permits the mortgagor readily to compute) the excess of the total amount of interest payments made during the year over the amount of the assistance payments made by the Secretary. This accounting must be accompanied by a warning to the mortgagor that, under Section 1.163-1(d) of the Internal Revenue Service Regulations, the mortgagor may deduct for Federal income tax purposes only that part, if any, of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD. The final rule retains the substance of the interim rule's requirement that the mortgagee urge the mortgagor to seek expert advice concerning the deductibility of assistance payments under State or local income tax laws.

The other commenter questioned whether the number of Part 235 mortgagors actually claiming interest deductions on their Federal income tax returns is sufficient to justify the new § 235.1001. While we have no statistics indicating how many Part 235 mortgagors itemize deductions, we have received sufficient inquiry on the subject matter to indicate that a problem does exist. The Department has found that some mortgagors receiving Part 235 assistance are uncertain as to the amount of interest which they may deduct on their Federal income tax forms. The final rule will eliminate confusion, because it directs each mortgagee to instruct each mortgagor that he or she may deduct for Federal tax purposes only that amount of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD during the year. The solution to the problem imposes only a slight burden on mortgagees.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicated that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection

during regular hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the additional burden the rule places on mortgage lenders, large or small, is minimal.

This rule was listed as item H-33-81 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1983 (48 FR 18054, 18071) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

This rule is applicable to all fully insured single family mortgages covering one-to-four family dwellings. The mortgage insurance programs which are listed in the catalog of Federal Domestic Assistance under the following numbers are eligible for consideration under these rules: 14.105, 14.108, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.140, 14.152, 14.159, 14.165.

Information collection requirements contained in this rule (§§ 203.508 and 235.1001) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2502-0235.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 235

Condominiums, Cooperative, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant program—housing and community development.

Accordingly, the Department amends Chapter II, Title 24 of the Code of Federal Regulations as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

(1) By revising § 203.508(c) to read as follows:

§ 203.508 Providing information.

* * * * *

(c) Within thirty days after the end of each calendar year, the mortgagee shall furnish to the mortgagor a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year. At the mortgagor's request, the mortgagee shall furnish a statement of the escrow account sufficient to enable the mortgagor to reconcile the account. (OMB control number 2502-0235).

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

(2) By adding a new § 235.1001 to read as follows:

§ 235.1001 Providing information.

The statement of interest paid and taxes disbursed furnished by the mortgagee to the mortgagor pursuant to § 203.508(c) of this Chapter shall include, or be accompanied by, an accounting of the total amount of assistance payments paid by the Secretary and applied to the mortgagor's account during the preceding year. Such accounting will be provided in a manner which indicates (or permits the mortgagor readily to compute) the excess of the total amount of interest payments made during the year over the amount of the assistance payments made by the Secretary. The foregoing accounting shall contain, or be accompanied by, notification regarding the deductibility of interest payments made by the mortgagor in substantially the following language: "If you itemize deductions on your income tax returns, please read this notice. Under § 1.163-1(d) of Federal Income Tax Regulations, you, as the borrower, may deduct for Federal income tax purposes only that part, if any, of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD during the year. You are urged to contact your tax advisor or State and local tax offices for guidance regarding the deductibility of payments on your State or local income tax returns." (OMB control number 2502-0235)

(Secs. 203, 211, and 235, National Housing Act, 12 U.S.C. 1709, 1715b, 1715z).

Dated: June 15, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-17103 Filed 6-23-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On March 4, 1983, the State of North Dakota submitted to OSM a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan. After opportunity for public comment and review of the amendment, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the North Dakota amendment meets the requirements of SMCRA and the Secretary's regulations (30 CFR Chapter VII, Subchapter R, 47 FR 28574-28604, June 30, 1982). Accordingly, the Assistant Secretary has approved the North Dakota Amendment.

EFFECTIVE DATE: The rule is effective July 25, 1983.

ADDRESSES: Copies of the full text of the proposed amendment are available for review during regular business hours at the following locations:

North Dakota Public Service Commission, State Capitol Building, Bismarck, North Dakota 58505;

Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644;

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Rm. 5315, 1100 "L" Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: William Thomas, Field Office Director, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644 Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate

reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal Law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement an abandoned mine land reclamation program.

The North Dakota AMLR Plan was approved on December 23, 1981. On March 4, 1983, North Dakota submitted a proposed amendment to the Plan. An approved State AMLR Plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, the Director of the Office of Surface Mining should follow the procedures set out in 30 CFR 884.14 in approving an amendment or revision of a State reclamation plan. The Director has followed these procedures and recommended to the Assistant Secretary on June 13, 1983 that the North Dakota Amendment be approved.

OSM published a notice of proposed rulemaking on the North Dakota amendment and requested public comment on March 31, 1983 (48 FR 13441). No public comments were received. The State of North Dakota held public hearings on the proposed amendment as required by State law on January 12, September 21, October 5, 1981 and on May 15 and 19, July 15 and November 3, 1982 in Bismarck, North Dakota. No public comments were received.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans and amendments, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 953. Provisions relating to North Dakota are found in 30 CFR Part 934.

Contents of the North Dakota amendment are:

1. Redefinition of the term "reclamation activities";
2. Time period for notice for right of entry and entry for studies on exploration;
3. Amended procedures for land acquisition;
4. Amended procedures for acceptance of gifts of land;
5. Amended procedures for disposition of acquired funds;
6. Amended procedures for approvals of real property;
7. Amended procurement policy, standard contract provisions, and contract and administration policy.

Assistant Secretary's Findings

In accordance with Section 405 of SMCRA, the Assistant Secretary finds that North Dakota has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined, pursuant to 30 CFR 884.15, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.
2. Views of other Federal agencies have been solicited and considered.
3. The State has the legal authority, policies and administrative structure to carry out the amendment.
4. The amendment meets all requirements of the OMS AMLR Program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Additional Findings

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and
2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

Further, the Office of Surface Mining has determined that the North Dakota amendment does not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of the Interior Manual DM 5162.3(A)(1), the Assistant Secretary's decision on the North Dakota amendment is categorically excluded from the National Environmental Policy Act requirements.

As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Moreover, an EA or an EIS will be prepared for the approval of grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

(Pub. L. 95-87, 304 U.S.C. 1201, *et seq.*)

Dated: June 13, 1983.

James R. Harris,

Director, Office of Surface Mining.

Dated: June 17, 1983.

William P. Pendley,

Acting Assistant Secretary for Energy and Minerals.

PART 934—NORTH DAKOTA

Therefore, § 934.20 is revised to read as follows:

§ 934.20 Approval of North Dakota Abandoned Mine Plan.

The North Dakota Abandoned Mine Plan, as submitted on July 28, 1981, is approved. Amendments to this Plan, as submitted on March 4, 1983, are also approved. Copies of the approved programs, as amended, are available at:

North Dakota Public Service Commission, State Capitol Building, Bismarck, North Dakota 58505

Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

[FR Doc. 83-17119 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2353-2]

Approval and Promulgation of State Implemention Plans; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rules.

SUMMARY: The purpose of this action is to withdraw approval of revisions to the California State Implementation Plan for the Yolo-Solano Air Pollution Control District (APCD). These revisions consist of two new source review rules and were approved on June 18, 1982. The intent of this action is to provide a public comment period for the revisions. EPA is publishing a notice of proposed rulemaking elsewhere in today's **Federal Register** on these rules. EPA is taking this action in accordance with the procedures described in the June 18, 1982, final rulemaking notice.

DATE: This action is effective June 24, 1983.

ADDRESSES: Copies of the Yolo-Solano APCD submittal are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, Library—Room 2404, 401 M Street, SW., Washington, D.C. 20460

Yolo-Solano Air Pollution Control District, 323 First Street, Suite 5, P.O. Box 1006, Woodland, CA 95695

FOR FURTHER INFORMATION CONTACT:

Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105], (415)974–7641

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1980 the California Air Resources Board submitted revisions to the State Implementation Plan. These revisions consisted of Yolo-Solano new source review rules 3.4.1, "Standards for Granting Applications" and 3.4.2, "Conditional Approval."

On June 18, 1982 EPA announced the availability of this submittal and approved it as a revision to the California SIP. (For further information about these revisions, see 47 FR 26379.)

In the approval notice EPA advised the public that the effective date of approval would be deferred for 60 days to provide an opportunity to submit comments on the revisions. EPA announced that, if within 30 days of the publication of the approval notice EPA received notice that someone wished to submit an adverse or critical comment, it would withdraw its approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice explaining this special procedure on September 4, 1981 (46 FR 44476.)

EPA has received adverse or critical comments concerning Rules 3.4.1 and 3.4.2 above. Therefore, in accordance with the procedures described above, EPA is today withdrawing its June 18, 1982 approval of these revisions and is proposing to approve Rules 3.4.1 and 3.4.2 elsewhere in today's **Federal Register.**

EPA is withdrawing the original approval without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment would be impractical because EPA needs to withdraw its approval quickly in order to consider the comments which members of the public want to submit. In addition, further notice is not necessary because EPA has already informed the public that it would follow this procedure if a request was received to comment on the revision (see 47 FR 26379 and 46 FR 44476). For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities. The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Section 110(a) and 301(a), Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a))

Dated: June 17, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. In § 52.220, paragraph (c)(54)(iv)(C) is added to read as follows:

§ 52.220. Identification of plan.

* * * * *

(c) * * *

(54) * * *

(iv) * * *

(C) New or amended Rule 3.13.

* * * * *

[FR Doc. 83-17041 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[KY-009; A-4-FRL 2364-2]

Designation of Areas For Air Quality Planning Purposes, Kentucky; Redesignation for Muhlenberg County

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a request by Kentucky to redesignate Muhlenberg County as attainment for the primary sulfur dioxide (SO_2) standards. This is based on the fact that the SO_2 emissions from the Tennessee Valley Authority's Paradise Plant are now attaining an emission rate of 5.2 lbs/MMBTU. Air quality will not change as a result of this action.

DATE: This action is effective June 24, 1983.

ADDRESS: Copies of the material submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Air Management Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, 18 Reilly Road, Building

#2, Ft. Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Melvin Russell, EPA Region IV, Air Management Branch, at the above listed address or phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: EPA proposed to redesignate Muhlenberg County to attainment for the primary SO_2 standards on January 21, 1983 (48 FR 2803). EPA received no comments in response to the proposed action. The primary SO_2 nonattainment designation for Muhlenberg County, Kentucky, was based on noncompliance with the applicable SO_2 emission limit (which was 5.2 lbs/MMBTU at the time of the nonattainment designation) by one source (Tennessee Valley Authority's Paradise Plant). This 5.2 lbs/MMBTU limit was subsequently changed to 3.1 lbs/MMBTU to assure protection of the secondary SO_2 standard.

However, with regard to the primary standard, dispersion modeling indicates that the 5.2 lbs of SO_2/MMBTU emission rate is adequate for attainment. In addition, the Paradise Plant is now meeting this limit. On this basis, on December 1, 1982, Kentucky requested that Muhlenberg County be redesignated as attainment for the primary SO_2 standard.

We should add that a 5.2 lbs/MMBTU SO_2 emission limit, which provides for primary attainment, will be a legally enforceable requirement of a proposed amendment to the consent decree to be filed in the civil enforcement litigation in the United States District Court for the Middle District of Tennessee (*Tennessee Thoracic Society* v. *Freeman*, Case No. 77-3286 and consolidated cases). This proposed emission limit is being met and all parties have agreed to the amendment to the consent decree. The proposed amendment to the consent decree will require that the Paradise Plant meet the 5.2 lbs/MMBTU limit until December 1, 1983, at which time the plant must meet the 3.1 lbs/MMBTU limit. The 3.1 lbs/MMBTU limit is presently part of the State's EPA approved SIP (45 FR 72153; 10/31/80), and is currently enforceable by EPA.

The January 21, 1983, notice indicated a final compliance date of November 1, 1983, for the Paradise Plant to meet the 3.1 lbs/MMBTU emission limit. The date should have been December 1, 1983. The correction of the date in this notice does not affect EPA's approval.

This approval pertains only to the primary standard, while the compliance date in question concerns only attainment of the secondary SO_2 NAAQS.

ACTION: EPA today approves the redesignation of Muhlenberg County to attainment for the primary SO_2 standard as requested by Kentucky on December 1, 1982. This approval is based on compliance certification that the TVA Paradise Plant is meeting a 5.2 lbs/MMBTU emission limit. This limit has been demonstrated through dispersion modeling to be sufficient to protect the primary SO_2 standard. Current available ambient data from 1979-1981 supports the modeling results.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1983. This action may not be challenged later in proceedings to enforce its requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107, Clean Air Act, as mended (42 U.S.C. 7409))

Dated: May 16, 1983.

William D. Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designation

In § 81.318, the "Kentucky SO_2" table is amended by removing the notation which indicates nonattainment of the primary standards in Muhlenberg County. As amended, the entry for this area reads as follows:

§ 81.318 Kentucky

KENTUCKY SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Muhlenberg County		×		
* * *	*	*	*	*

[FR Doc. 83-17043 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[WH-6-FRL 2387-8]

Hazardous Waste Management Programs, Oklahoma; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Oklahoma has applied for Interim Authorization, Phase II, Component C, to implement a permitting program for land disposal facilities. EPA has reviewed Oklahoma's application for Phase II, Interim Authorization, Component C, and has determined that Oklahoma's hazardous waste program is substantially equivalent to the Federal program covered in Component C. The State of Oklahoma is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program covered by Component C in lieu of the Federal program in the State of Oklahoma.

EFFECTIVE DATE: Interim Authorization for Phase II, Component C, for Oklahoma shall become effective June 24, 1983.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, 1201 Elm St., Dallas, Texas 75270, Telephone (214) 767-2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste

program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the July 26, 1982, **Federal Register** (47 FR 32373), the Environmental Protection Agency announced that States could apply for Component C of Phase II, Interim Authorization. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting facilities that dispose hazardous waste in waste piles, surface impoundments, land treatment, and landfills.

The State of Oklahoma received Interim Authorization for Phase I on January 16, 1981, and Interim Authorization for Phase II, Components A & B, on December 13, 1982.

Draft Application

The State of Oklahoma submitted its draft application for Phase II, Component C, Interim Authorization, on January 3, 1983. After detailed review, EPA transmitted comments to the State on February 2, 1983, for its consideration.

EPA noted that the proposed State rules required the notice accompanying a draft permit to state that residents and persons doing business in Oklahoma may request a meeting (analogous to a federal public hearing); however, other persons would not be on notice that their request for a meeting would be entertained. RCRA Section 7004(b) and 40 CFR 124.11 require that any person may request a public hearing on a draft permit. Even though the State may have the authority to voluntarily grant requests for meetings from any person, it appeared that the proposed State regulations were unacceptable because of the limited notice required by the proposed regulations.

This deficiency was corrected when the State's rules were adopted by the Oklahoma State Board of Health on January 26, 1983.

Final Application

On March 9, 1983, Oklahoma submitted to EPA an official application for Phase II, Component C, Interim Authorization, under RCRA. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Oklahoma's hazardous waste management program.

EPA comments were forwarded to the State on April 19, 1983. No major questions were raised in the comments, which requested minor additions/clarifications to the application. By letter dated May 2, 1983, the State responded satisfactorily to the issues raised by EPA.

Public Hearing and Comment Period

As noticed in the **Federal Register** on March 29, 1983, EPA gave the public until May 3, 1983, to comment on the State's application. EPA also issued a public notice for a hearing to be held in Oklahoma City, Oklahoma on May 18, 1983, if significant public interest was expressed.

EPA received no written or oral comments, inquiries, or requests for a hearing.

Decision

EPA has reviewed Oklahoma's complete application for Interim Authorization Phase II, Component C, and has determined that the State program is substantially equivalent to Phase II, Component C, of the Federal program as defined in 40 CFR Part 271, Subpart F, as amended at 47 FR 32373 (July 26, 1982). In accordance with Section 3006(c) of RCRA and implementing regulations, Oklahoma is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program for permitting construction and operation of facilities that dispose of hazardous waste in lieu of the Federal Program.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernment relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 19, 1983.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 83-17032 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

[Docket No. FEMA-205.60]

Use of Gifts and Bequests for Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule sets forth FEMA's procedures for implementing a disaster assistance program using funds bequeathed to the Federal government by Cora C. Brown of Kansas City, Missouri. Mrs. Brown died in 1977, leaving a portion of her estate to the United States to be used as special fund solely for the relief of human suffering caused by natural disasters or other disasters not caused by or attributable to war. A special fund, known as the Cora Brown Fund, has been established in accordance with Pub. L. 96-446 (94 Stat. 1893; October 13, 1980), thus fulfilling Mrs. Brown's will.

FEMA intends to use the funds, and any others that may be bequeathed

under authority of Pub. L. 96–446, in the manner and under the conditions described below. FEMA will invest and reinvest excess money in the fund according to the provisions of Pub. L. 96–446.

FEMA published an interim rule, with a request for comments, on December 23, 1982. Only one comment was received. FEMA responded directly to that commenter, and made one change to the rule as a result. In paragraph b., the phrase "and credit from private sources if the disaster loan agency requires a 'credit elsewhere test' " has been deleted. The deletion will allow FEMA the flexibility to award funds to a disaster victim without requiring (or meaning to imply) that he/she borrow money from a commercial source instead of receiving money from the Cora Brown Fund.

DATE: These regulations are effective on June 24, 1983.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–287–0555.

SUPPLEMENTARY INFORMATION:

Environmental Considerations.

This rule deals with administrative actions and is categorically excluded from the requirements for environmental assessment under 44 CFR Part 10.

Executive Order 12291, "Federal Regulations".

This rule is not a "major rule" within the context of Executive Order 12291 for the following reasons: (a) It will not have an annual effect on the economy of $100 million or more; (b) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and (c) it will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule will not have a significant economic impact on small entities, within the meaning of 4 U.S.C. 605 (the Regulatory Flexibility Act), in that it pertains only to disaster assistance for individuals. Therefore, no regulatory flexibility analysis will be prepared. This rule does not involve any information collection.

Authority

This rule is issued under authority of Section 601 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by Pub. L. 96–446, and Executive Order 12381.

Content of the Rule

The rule states the purposes for awarding funds from the "Cora Brown Fund", conditions for use of the fund, and administrative procedures for awards.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—FEDERAL DISASTER ASSISTANCE (PUB. L. 93–288)

Accordingly, new § 205.60, is added to Subpart D of 44 CFR Part 205, as follows:

§ 205.60 Use of gifts and bequests for disaster assistance purposes.

(a) *Introduction.* By publishing this regulation, FEMA gives notice of the establishment of a special disaster assistance fund made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provide for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora Brown Fund will not be available to the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Disaster Relief Act, or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Disaster Relief Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no employees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well-being of disaster victims. For example, services to the elderly, to children, or to handicapped persons, such as handyman or chore services, transportation, recreational programs, provision of special ramps, or hospital or home-visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Disaster Relief Act, only in areas designated as eligible for Federal disaster assistance through notice in the **Federal Register**, and only at the discretion of the Assistant Associate Director, Office of Disaster Assistance Programs, FEMA. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) a disaster victim normally will receive no more than $2,000 from this fund in any one declared disaster unless the Assistant Associate Director determines that a larger amount is in the best interest of the disaster victim and the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Associate Director, based on the Regional Director's recommendation.

(3) The fund may not be used in a way that is inconsistent with other Federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and

the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Associate Director shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color, religion, national origin, sex, age, or economic status.

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Associate Director, Office of Disaster Assistance Programs, shall be responsible for awarding funds and authorizing disbursement.

(2) The Comptroller of FEMA shall be responsible for fund accountability and in coordination with the Assistant Associate Director, for liaison with the Department of the Treasury concerning the investment of excess money in the fund pursuant to the provisions of Pub. L. 96–446.

(3) Each FEMA Regional Director may submit requests to the Assistant Associate Director on a disaster victim's behalf by providing documentation which consists of the disaster victims needs and supporting documentation, including a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Associate Director shall review the facts and make a determination. If the award amount is below $2,000, the Assistant Associate Director may appoint a designee to have approval authority; approval authority of $2,000 or above shall be retained by the Assistant Associate Director. The Assistant Associate Director shall notify the Comptroller of a decision for approval, and the Comptroller shall order a check to be sent to the disaster victim (or jointly to the disaster victim and an assistance organization), through the Regional Director. The Assistant Associate Director shall also notify the Regional Director of the decision, whether for approval or disapproval. The Regional Director shall notify the disaster victim in writing, and identify any award as assistance from the Cora Brown Fund.

(4) If the award is to be for a service to a group of disaster victim's, the Regional Director shall submit his/her recommendation and supporting documentation to the Assistant Associate Director (or his/her designee if the award is below $2,000), who shall review the information and make a determination. In cases of approval, the Assistant Associate Director shall request the Comptroller to send a check to the intended recipient or provider, as appropriate. The Assistant Associate Director shall notify the Regional Director of the decision. The Regional Director shall notify a representative of the group in writing.

(5) The disaster victim may appeal the Assistant Associate Director's (or his/her designee's) decision by submitting a written statement to the Associate Director, State and Local Programs and Support, through the Regional Director. The appeal letter must be dated no less than 15 days after the date of the notification letter sent to the disaster victim by the Regional Director. The Regional Director shall forward the appeal letter, along with any additional information relevant to the appeal, to the Associate Director within 15 days of the receipt of the appeal in the Regional office. The Associate Director will consider the additional information from both sources, and shall make a decision promptly. If the decision is for approval, the check procedures in (3) above shall be followed. If the decision is to deny the appeal, the Associate Director shall notify the disaster victim in writing, through the Regional Director.

(6) The Comptroller shall process requests for checks, shall keep records of disbursement and balance in the account, and shall provide the Assistant Associate Director with quarterly reports.

(e) *Audits.* The Inspector General of FEMA shall audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Associate Director, State and Local Programs and Support, for information, comment, and appropriate action. A copy shall be provided to the Comptroller for the same purpose.

(f) *Effective date.* Assistance will be made available as of June 24, 1983 in connection with any declared major disaster or emergency.

Dated: June 17, 1983.

Jeffrey S. Bragg,

Executive Deputy Director.

[FR Doc. 83-17036 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 2 to Thirteenth Revised Service Order No. 1474]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 2 to Thirteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96–254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m, June 30, 1983, and continuing in effect until 11:59 p.m., September 30, 1983, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

Decided: June 20, 1983.

List of Subjects in 49 CFR Part 1033

Railroads.

Upon further consideration of Thirteenth Revised Service Order No. 1474 (48 F.R. 6989 and 13047), and good cause appearing therefor:

It is ordered,

§ 1033.1474 Service Order No. 1474

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)

Thirteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended for an additional ninety (90) days, and shall expire at 11:59 p.m., September 30, 1983, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1983.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Public Law 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17086 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 123
Friday, June 24, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 430

[Amdt. 3]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1984 and succeeding crop years n all states except California and Arizona where it will be effective for the 1985 and succeeding crop years, by (1) changing the policy to make it easier to read, (2) eliminating the substitute crop provision, (3) providing that sugar beets are to be insurable the year following sugar beets in certain states when designated by the actuarial table, (4) adding a provision permitting the determination of indemnities based on the acreage report in lieu of at loss adjustment time, (5) adding a provision to provide a coverage level if the insured does not select one, (6) adding a replanting payment provision, (7) adding a 60-day claim for indemnity provision, (8) adding a provision regarding appraisals following the end of the insurance period for unharvested acreage, (9) adding a hail/fire provision for appraisals on uninsured causes, (10) providing that all uninsured appraisals count, (11) changing the cancellation/termination dates to conform with farming practices, (12) providing that any change in the policy will be available in the service office by a certain date, (13) adding a definition for "service office," (14) providing for unit determination when the acreage report is filed, and (15) adding a section on "descriptive headings." The intended effect of this rule is to update the policy for insuring sugar beets.

DATE: Written comments on this proposed rule must be submitted not later than August 23, 1983, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance: Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beet.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sugar Beet Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

PART 430—[AMENDED]

1. The Authority citation for 7 CFR Part 430 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (1506, 1516).

2. 7 CFR 430.7 is amended by revising the Sugar Beet Crop Insurance Policy in paragraph (d) to read as follows:

Sugar Beet Crop Insurance Policy

[This is a continous contract. Refer to Section 15.]

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period: (1) Adverse weather conditions; (2) fire; (3) insects; (4) plant disease; (5) wildlife; (6) earthquake; or (7) volcanic eruption unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(7).

b. We shall not insure against any cause of loss or production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good sugar beet farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be sugar beets:

(1) Which are grown under a contract with a processor for processing as sugar;

(2) Which are grown on insured acreage; and

(3) For which a guaranatee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed and we determine it is practical to replant to sugar beets and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree to coverage reduction on our form.

(5) Excluded from the processor contract for, or during, the crop year;

(6) Planted to a type or variety of sugar beets not established as adapted to the area or excluded by the actuarial table;

(7) Planted to sugar beets:

(a) The preceding crop year in Michigan, Minnesota, North Dakota and Ohio unless otherwise designated by the actuarial table; or

(b) The two preceding crop years in all other states unless otherwise designated by the actuarial table;

(8) in California, except Imperial county, planted before filing of the application until a normal stand is obtained, as determined by us;

(9) of volunteer sugar beets; or

(10) planted with a crop other than sugar beets.

e. Where insurance is provide for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good sugar beet irrigation practice at the time of planting; and

(2) any loss of production caused by failure to carry out a good sugar beet irrigation practice, except failure of the water supply from an unavoidable cause occuring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You shall report on our form:

a. All the acreage of sugar beets in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any sugar beets planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities shall be contained in the actuarial table.

b. The production guarantees per acre shall be as follows:

(1) First Stage applies from planting until July 1 except in California and Arizona where it is from planting until the earlier of thinning or 90 days after planting. The first stage shall also apply to any acreage we determine was damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets.

(2) Second Stage applies from the end of the first stage until at least 15 percent of the production guarantee per acre has been harvested.

(3) Third Stage applies from after harvest of at least 15 percent of the production guarantee per acre.

The production guarantee applicable to any acreage within a unit shall be that established for the stage reached by the crop on such acreage, as determined by us.

c. If you have not elected a coverage level, you shall have coverage level 2.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage Adjustment Factor For Current Crop Year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for unfavorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage Adjustment Factor For Current Crop Year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	100	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 to up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. *Deductions for debt.* Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the sugar beets are planted and ends at the earliest of:

(1) Total destruction of the sugar beets;

(2) Harvest of the unit;

(3) Final adjustment of a loss; or

(4) The following dates in which the sugar beets are normally harvested:

(a) July 15 for Arizona and Imperial County, California;

(b) The last day of the 12th calendar month after the date of planting on the unit in all other California counties, unless a request for extension of insurance period is received by us before such date and we approve the request;

(c) November 25 in Ohio; and

(d) November 15 in all other states.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) total destruction of the sugar beets on the unit;

(b) harvest of the unit; or

(c) the calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the sugar beets which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) harvest of the unit; or

(3) the calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) multiplying the insured acreage by the production guarantee;

(2) subtracting therefrom the total production of sugar beets to be counted (see section 9f);

(3) multiplying the remainder by the price election; and

(4) multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The indemnity shall be reduced by the amount of any replanting payment.

f. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Any harvested production of sugar beets shall be adjusted by:

(a) dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) multiplying the results (round to three places) by the tons of such sugar beets.

The average percentage of sugar shall be determined by the processor from individual test taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery the factor shall be 1.000.

(2) Any harvested sugar beets which are not acceptable under the contract with a processor due to insurable causes shall be adjusted by:

(a) Dividing the value of such sugar beets, as determined by us, by the value of undamaged sugar beets containing the percentage of sugar shown in the actuarial table; and

(b) multiplying the results by the number of tons of such sugar beets.

(3) Appraised production to be counted shall include:

(a) unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sugar beet farming practices;

(b) not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause.

(4) There shall be no adjustment for quality on any appraisal. For acreage which does not qualify for the third stage guarantee, any amount of appraised and harvested production in excess of the difference between the third stage guarantee and the guarantee applicable to such acreage shall be counted. However any appraised production lost due to uninsured causes shall be counted in its entirety and not reduced by the difference between stage guarantees.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of sugar beets becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested sugar beets on the basis of field appraisals conducted after the end of the insurance period.

(7) When you have elected to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(8) The commingled production of units shall be allocated to such units in proportion to the liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured sugar beets replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but shall not exceed 1 ton multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

Any replanting payment will be considered as an indemnity.

h. You shall not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1506(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount determined by us by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by us.

10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. This transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year on our prescribed form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Arizona and California	Aug. 31.
All other states	Apr. 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissovled, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the acturial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 for counties with an April 15 cancellation date and by May 31 for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sugar beet crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sugar beets are normally grown and shall be designated by the calendar year in which the sugar beets are normally harvested.

d. "Harvest" means the lifting and topping of the sugar beets for delivery to a processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practice necessary to replant insured acreage to sugar beets.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the sugar beets or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between us and you. We shall determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Information collection requirements.

Information collection requirements contained in these regulations (7 CFR Part 430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

Approved by the Board of Directors on April 26, 1983.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,
Acting Manager.

Dated: June 16, 1983.

[FR Doc. 83-17042 Filed 6-23-83; 8:45 am]
BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Corn

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements established in Executive Order 12291 for the periodic review of regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Corn. Based upon all information available, including the comments received as a result of the May 8, 1980, **Federal Register** Notice (45 FR 30446), it is found that further study is necessary to properly evaluate the revision of certain factors in the corn standards. Changes are, however, being proposed which would clarify the Sample grade requirement for corn and the definition of distinctly low quality. Comments are solicited from interested parties on this proposal.

DATE: Comments must be submitted on or before August 23, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Unit, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382-1738. All comments received will be made available for public inspection at the above address during regular business hours [7 CFR 1.27(b)].

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr. (address as above), telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1. The action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of corn inspection services do not met the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Standards Review

In conformance with the requirement for the periodic review of existing regulations, FGIS published a Request for Comment on the U.S. Standards for Corn, Soybeans, and Mixed Grain in the May 8, 1980, **Federal Register** (45 FR 30446). This notice addressed specific areas of the standards for consideration, including need for the standards; improvement thereof; clarification or simplification of language; and the usefulness of moisture, test weight, and broken corn and foreign material (BCFM) as grade determining factors.

Fifty-nine comments, the majority of which were on the corn and/or soybean standards, were received as a result of the notice. Proposed rulemaking to the soybean and mixed grain standards will be addressed in separate **Federal Register** notices.

A majority of the commenters who addressed the adequacy of the corn standards favored some form of revision of the standards.

Although there was no consensus of opinion on the need to change one or more particular elements in the standards, changes were recommended which included: (1) separation of BCFM into two distinct factors, (2) removal of test weight and moisture as grading factors, (3) revision of the moisture limits, and (4) the inclusion of a hardness test in the standards. However, further study is necessary to properly evaluate the separation of BCFM and determination of hardness, and due to varied opinions within the grain industry, additional information is needed to determine if revision or deletion of test weight and moisture would facilitate corn marketing. Therefore, no changes in these factors are being proposed at this time.

FGIS is, however, proposing changes to the corn standards to incorporate information presently contained in the Grain Inspection Handbook on the determination of distinctly low quality (DLQ) and other Sample grade conditions. These proposed changes clarify the determination of DLQ and the Sample grade requirements and do not change the present grades or grade requirements for corn.

To provide a better understanding of the DLQ condition in corn, FGIS proposes that § 810.351 *Terms defined* be expanded to include a definition of distinctly low quality. FGIS also proposes that § 810.901 *Interpretation with respect to the term "distinctly low quality,"* which states the limit for crotalaria seed, be revised by deleting corn from this section and including these limits in the Sample grade definition in § 810.353(a) *Grades and grade requirements for Corn.* In addition, it is proposed that the Sample grade definition be expanded to include the limits for stones, glass, castor beans, cocklebur, unknown foreign substance(s), and animal filth. Inclusion of this information in the definition would clarify the Sample grade requirements for corn and achieve uniformity in format and structure with the majority of the other standards covered under the Act.

It is also noted that proposed rulemaking to the U.S. Standards for Corn was published in the March 4, 1983, **Federal Register** (48 FR 9282). Public comments were invited on revision of 810.352(a), *Basis of determination,* to permit odor determination either prior to or after mechanical cleaning of the sample to be inspected. This proposal also applies to the standards for wheat, barley, rye, sorghum, flaxseed, and triticale. In the April 5, 1983, **Federal Register** (48 FR 14601) FGIS proposed to revise § 810.901 to apply only to the standards for corn, rye, soybeans, and flaxseed. Further, it was stated that as these four standards are reviewed, the provisions of § 810.901 would be incorporated elsewhere in the standards with the intention of eventually eliminating § 810.901 from all standards.

Comments including data, views and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), upon request, such information may be presented orally in an informal manner. It should be noted that pursuant to section 4(b) of the Act no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year afte promulgation, unless in the judgment of the Administrator the public health, interest or safety requires that they become effective sooner.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, it is proposed that § 810.351 be amended by adding § 810.351(l),and § 810.353(a) and § 810.901 be revised as follows:

§ 810.351 Terms defined.

* * * * *

(l) *Distinctly low quality.* Corn which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones, weckage, etc.

§ 810.353 Grades, grade requirements and grade designations.

* * * * *

(a) *Grades and grade requirements for Corn.* (See also paragraph (d) of this section.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—			
		Moisture (percent)	Broken corn and foreign material (percent)	Damaged Kernels	
				Total (percent)	Heat-damaged kernels (percent)
U.S. No. 1	56.0	14.0	2.0	3.0	0.1
U.S. No. 2	54.0	15.5	3.0	5.0	0.2
U.S. No. 3	52.0	17.5	4.0	7.0	0.5
U.S. No. 4	49.0	20.0	5.0	10.0	1.0
U.S. No. 5	46.0	23.0	7.0	15.0	3.0

U.S. Sample grade: U.S. Sample grade shall be corn which—(1) Does not meet the requirement for the grades U.S. Nos. 1, 2, 3, 4, or 5; or (2) In a 1000 gram sample, contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 8 or more cocklebure, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), or animal filth in excess of 0.20 percent; or (3) Has a musty, sour, or commercially objectionable foreign odor; or (4) Is heating or otherwise of distinctly low quality.

§ 810.901 Interpretation with respect to the term distinctly low quality.

The term *distinctly low quality* when used in the United States Standards for Rye, Soybeans, and Flaxseed, shall be construed to include grain which contains three or more crotalaria seeds (*Crotalaria* spp.) in 1,000 grams of grain.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)))

Dated: June 9, 1983.

Kenneth A. Giles,

Administrator.

[FR Doc. 83-17127 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

7 CFR Part 1701

[Bulletin 345-45]

Public Information; Appendix A—REA Bulletins Field Trial of Telephone Construction Materials and Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A by revising Bulletin 345-45, Field Trial of Telephone Construction Materials and Equipment. The proposed revision will more clearly set forth the responsibilities of borrowers and manufacturers in the conduct of a field trial. The proposal is also intended to increase the effectiveness of field trials while reducing the effort in collecting field performance data and the confusion of the existing bulletin. Bulletin 345-45 will be retitled "Field Trail of Telecommunications Construction Materials and Equipment."

DATE: Public comments must be received by REA no later than August 23, 1983.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: E. J. Cohen, Engineering Management and Standards Engineer, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8698. The draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins by revising Bulletin 345-45. This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. The proposal does not fall within the scope of the Regulatory Flexibility Analysis and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10-851—Rural Telephone Loans and Loan Guarantees.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). The will not be effective until approved by OMB.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

The current edition of Bulletin 345-45 does not clearly establish the responsibilities of borrowers and manufacturers in the evaluation of a product by field trial, nor does it clearly establish the reasons for a field trial. As a result, significant staff time is required in almost every case to obtain the required information from a field trial. Continuation of the bulletin in its existing form would prepetuate this inefficiency. Withdrawing the document would deprive REA of a valuable tool in evaluating the acceptability of materials and equipment—the field trial. As a result, revision of the document along the proposed lines is considered to be in the best interest of the program.

Copies of the proposed revision to Bulletin 345-45 are available upon request from the address listed above.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Loan programs—communications, Telecommunications, Telephone.

Dated: June 15, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-16808 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1746

General Funds (Telephone Program)

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to add Part 1746 to 7 CFR Chapter XVII. This part states the general funds policy of the REA telephone program and includes a revision of existing REA general funds policy. As a condition to advances of loan funds or approval of a loan, borrowers with general funds in excess of eight percent to total telephone plant or $100,000 (whichever is greater) currently are required to use the excess to supplement loan funds for approved loan purposes. Under this

proposal, for purposes of calculating the level of the borrower's general funds, REA will consider allowing borrowers so requesting to exclude from their general funds all or parts of amounts invested in or advanced for telecommunications projects, provided the amount requested does not exceed dividends and other distributions allowable without prior REA approval. Certain other procedural requirements would also apply.

DATE: Public comments must be received by REA no later than August 23, 1983.

ADDRESS: Comments may be mailed to John N. Rose, Director, Telecommunications Management Division, Rural Electrification Administration, Room 2847, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Comments received may be inspected at Room 2847 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Joel M. Babb, Chief, Loans and Management Branch, Telecommunications Management Division, Room 2847, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number (202) 382-8549. The Draft Regulatory Impact Analysis describing the options considered in developing this proposed rule is available on request from the above-named individuals.

SUPPLEMENTARY INFORMATION: This proposed action has been issued in conformance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major."

This action is not subject to the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans.

This proposed action would add Part 1746 to 7 CFR Chapter XVII. The primary objective of the proposal is to enable borrowers to use their own general funds to enter into new rural telecommunications markets and provide services not included in the term "telephone service" in Section 203(a) of the Rural Electrification Act (7 U.S.C. 924) (Act). This proposed revision would enable borrowers to provide needed services in rural areas, develop added financial strength through diversification, and enhance REA loan security. The current REA policy with regards to general funds is to include investments for telecommunications projects (other than the furnishing and improving of telephone service) in general funds when computing the ratio of a borrower's general funds to its total telephone plant. Borrowers must maintain general funds at a level of eight percent or less of total telephone plant (the "appropriate general funds level") in order to receive advances of loan funds or approval of loans or loan guarantees. Inclusion of any sizeable telecommunications investment would prevent a borrower from receiving loan fund advances or approval of a loan or loan guarantee. As a result, borrowers are effectively barred from using their own general funds to provide needed services, such as CATV, to rural areas. This proposal would allow borrowers who could pay dividends or make other distributions without prior REA approval under their mortgage to invest in telecommuncations projects. REA then would exclude from general funds, for purposes of computing the appropriate general funds level, investments in telecommunications projects up to the amount of allowable dividends or other distributions.

List of Subjects in 7 CFR Part 1746

Administrative practice and procedure, Loan programs—Communications, Telecommunications, Telephone.

Therefore, it is proposed to amend 7 CFR Chapter XVII by adding Part 1746 to read as follows:

PART 1746—GENERAL FUNDS

Sec.
1746.1 General.
1746.10 Definitions.
1746.20 Level of general funds.
1746.30 Exclusions from general funds.

Authority: 7 U.S.C. 901 et seq. and 7 U.S.C. 1921 et seq.

§ 1746.1 General.

(a) This part sets forth REA policy on general funds of REA telephone borrowers and establishes the appropriate level of working capital and reserve funds for use by borrowers and REA in approving loans, loan guarantees, and loan funds advances. It is REA policy that general funds in excess of the appropriate level shall be applied to uses which conserve REA loans funds.

(b) It is the responsibility of each borrower to determine the proper amount and use of its general funds consistent with its needs and this policy.

(c) Investments and expenditures of general funds should not impair the Government's security, the ability of the borrower to repay its notes as scheduled, or accomplishment of the objective of the RE Act.

§ 1746.10 Definitions.

(a) "General Funds" means all cash and investments not held in trustee or similar accounts as required by loan contract or security instruments, and normally includes the balances of the following accounts from the Federal Communications Commission (FCC) Uniform System of Accounts (USoA) (47 CFR Parts 31 and 33).

Account title	USoA class A & B account No.	Shown on REA form 479 line
Investments in affiliated companies	101.1	A-10
Advances to affiliated companies	1101.2	
Other investments	102	A-11
Miscellaneous physical property	103	
Sinking Funds	104	
Cash—general funds	113.1	A-12
Cash—transfer of funds	113.3	
Working funds—petty cash	115.1	
Working funds—change fund	115.2	
Temporary cash investments	116	
Special cash deposit	114	A-14

(b) "Loan Funds" means the cash advanced to the borrower under loans made or guaranteed under the RE Act.

(c) "Telecommunications" means any transmission, emission, or reception of signals, writing, images and sounds or intelligence of any nature by wire, fiber, radio, visual or electromagnetic means.

(d) "Total Telephone Plant" normally includes the balances of the following accounts from the FCC Uniform System of Accounts:

Account title	USoA class A & B account No.	Shown on REA form 479 line
Telephone plant in service	100.1	A-6
Tel. plant under construction—contract	100.22	
Tel. plant under const.—force account	100.23	
Tel. plant under const.—work order	100.24	
Property held for future telephone use	100.3	
Telephone plant acquisition adjustment	100.4	
Telephone plant adjustment	100.7	

§ 1746.20 Level of general funds.

(a) When reviewing a loan application and determining the amount of the loan, or when reviewing requisitions for loan fund advances, REA considers the amount of the applicant's general funds.

(b) As a condition to further advances of loan funds or approval of a loan, borrowers whose general funds exceed the greater of $100,000 or eight percent of Total Telephone Plant (the "appropriate general funds level") shall be required to use this excess to supplement loan funds for approved loan purposes, except as otherwise authorized by the Administrator of REA.

(c) REA will consider exceptions to this rule under special circumstances which make the appropriate general funds level insufficient to meet the borrower's needs.

§ 1746.30 Exclusions from general funds.

(a) REA will consider approving requests from borrowers to exclude from its general funds, for purposes of this Part, all or a portion of investments which REA determines to be consistent with the objectives set forth in § 1746.1. The following investments are among those which may be considered for exclusion:

(1) Telephone property retired and held for sale.

(2) Investments in organizations approved by REA, which provide services related to operations of the borrower, provided the investment bears a reasonable relationship to the value of the service to the borrower.

(3) Membership fees in electric cooperatives and related patronage capital credits not retired.

(4) The cash surrender value of a reasonable amount of life insurance where the borrower is the beneficiary of the insurance policy.

(5) Terminal equipment held for retail sale or lease if it is a type and has a value reasonably related to the telephone service provided by the borrower.

(6) Class B and C stock of the Rural Telephone Bank.

(b) In addition to approving exclusion of these investments, REA will also consider permitting a borrower to exclude from its general funds, for purposes of this Part, part or all of amounts which are invested in or advanced for telecommunications projects provided:

(1) The amount requested does not exceed dividends and other distributions allowable without prior REA approval. The amount of such exclusion, if approved by REA, shall be considered to be a distribution of capital for the purpose of determining whether the borrower's mortgage restricts dividends or other distributions.

(2) Telecommunications services not included within the term "telephone service" in Section 203(a) of the RE Act (7 U.S.C. 924) are to be provided by a subsidiary or affiliate of the borrower unless otherwise approved by REA.

(3) The borrower provides any evidence which may be required to demonstrate to the satisfaction of REA that the project is feasible and based on sound engineering practices and that the investment shall not adversely affect the interests of the Government.

(4) The borrower provides, when requested, a satisfactory opinion of counsel that the use of general funds is consistent with the borrower's articles of incorporation and bylaws, and that the proposed telecommunications project complies with applicable laws and regulations.

Dated: June 9, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-17128 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Docket No. R-0474]

Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board is proposing to clarify the meaning of participations in bankers' acceptances for purposes of the bankers' acceptance limitations of the Bank Export Services Act.

DATES: Comments must be received by August 5, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposed rule to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or such comments may be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") provides that a member bank or a Federal or State branch or agency in the United States whose parent foreign bank has, or is controlled by a foreign company or companies that have, more than $1 billion in total worldwide consoldiated bank assets, may create eligible bankers' acceptances ("BAs")[1] in the aggregate up to 150 percent of its paid up and unimpaired capital stock and surplus and, with the permission of the Board, up to 200 percent of its paid up and unimpaired capital stock and surplus ("capital") (12 U.S.C. 372). Section 207 also prohibits these institutions from creating eligible BAs for any one person in the aggregate in excess of 10-percent of the institution's capital. Eligible BAs growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for such an institution.

This section of the BESA also provides that any portion of an eligible BA created by an institution subject to the bankers' acceptance limits contained therein ("covered bank") that is conveyed through a participation to another covered bank shall not be included in the calculation of the creating bank's BESA limits. However, the amount of the participation is to be applied to the BA limits applicable to the covered bank receiving the participation.

The language of the statute does not define what constitutes such a participation for purposes of the applicability of the BESA limitations. However, the statute does authorize the Federal Reserve Board to further define any of the terms used in section 207 of the BESA (12 U.S.C. 372(7)(G)). In addition, the legislative history of this statute indicates that Congress took note of and encouraged a then ongoing analysis by the Federal Financial Institutions Examination Council ("Council") on participations in BAs and required the Council to report to the appropriate congressional committees. H. Rep. No. 97-924, 97th Cong., 2nd Sess. 25 (1982). In its report to Congress of March 25, 1983, the Council stated that it was not addressing the matter of the definition of a participation in eligible BAs for purposes of determining compliance with the BESA limits because the statute specifically granted the Board the authority to define further any of the terms used in section 207.

The Board is proposing for public comment a clarification of the meaning of participations in BAs for purposes of

[1] An eligible BA is a BA that meets the criteria of the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372).

the BESA limitations. The proposed interpretation describes the minimum requirements that such a participation would have to meet if the eligible BA (or portion thereof) that the participation conveys is to be excluded from the BA limitations applicable to the bank creating the BA. Commenters may wish to address whether the Board should impose additional minimum requirements upon such participations—in addition to commenting on other aspects of the proposals.

The impact of this proposal on small entities had been considered in accordance with section 603 of the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 603). The Board's proposal will provide small member banks that are covered by the BESA limitations with increased flexibility with regard to the usage of eligible BAs. No new recordkeeping or reporting requirements will be imposed as a results of this action.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

PART 250—[AMENDED]

Pursuant to its authority under the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372), the Board of Governors proposes to amend 12 CFR Part 250—Miscellaneous Interpretations—by adding a new § 250.165 to read as follows:

§ 250.165 Bankers' acceptances: definition of participations.

(a)(1) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97–290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be created by a member bank from 50 percent (or 100 percent with the permission of the Board) of its paid up an unimpaired capital stock and surplus ("capital") to 150 percent (or 200 percent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 percent of the institution's capital. Eligible BAs growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for a member bank. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).

(2) This section of the BESA also provides that any portion of an eligible BA created by an institution subject to the BA limitations contained therein ("covered bank") that is conveyed through a participation to another covered bank shall not be included in the calculation of the creating bank's limits. The amount of the participation is subject to the BA limitations applicable to the covered bank purchasing the participation. The language of the statute does not define what constitutes such a participation. However, the statute does authorize the Board to further define any of the terms used in section 207. The Board is clarifying the term participation for purposes of the BA limitations of the BESA.

(b) The legislative history of section 207 of the BESA indicates that Congress intended that the bank receiving the participation ("junior bank") be obligated to the creating bank conveying the participation ("senior bank") in the event that the account party defaults on its obligation to pay, but that the junior bank need not also be obligated to pay the holder of the acceptance at the time the BA is presented for payment. H. Rep. No. 97–629, 97th Cong., 2nd Sess. 15 (1982); 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks by Rep. Barnard); and 128 *Cong. Rec.* H 8462 (daily ed. October 1, 1982) (remarks by Rep. Barnard). The legislative history also indicates that Congress intended that eligible BAs in which participations had been conveyed not be required to indicate the name(s) (or interest(s)) of the junior bank(s) on the acceptance in order for the BA to be excluded from the BESA limitations applicable to the senior bank. 128 *Cong. Rec.* S 12237 (daily ed. September 24, 1982) (remarks of Senators Heinz and Garn); and 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks of Rep. Barnard).

(c)(1) In view of Congressional intent with regard to what constitutes a participation in an eligible BA, the Board has determined that, for purposes of the BESA limits, a participation must satisfy the following two *minimum* requirements:

(i) A written agreement entered into between the junior and senior bank under which the junior bank acquires the senior bank's claim against the account party to the extent of the amount of the particpation that is enforceable in the event that the account party fails to perform in accordance with the terms of the acceptance. The agreement between the senior bank and the account party must indicate that the rights that the senior bank acquires under the agreement are assignable by the senior bank, and

(ii) The agreement between the junior and senior bank provides that the senior bank obtains a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(2) An eligible BA that is conveyed through a participation that does not satisfy these minimum requirements would continue to be included in the BA limits applicable to the senior bank. Further, an eligible BA conveyed to a covered bank through a participation that provided for additional rights and obligations among the parties would be excluded from the BESA limitations of the senior bank provided the minimum requirements were satisfied.

(3) A participation structured pursuant to these minimum requirements would be as follows: Upon the conveyance of the participation, the senior bank retains its entire obligation to pay the holder of the BA at maturity. The senior bank has a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance. Similarly, the junior bank has a corresponding claim against the account party to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(d) The Board stressed that both the junior bank's claim on the account party and the senior bank's claim on the junior bank involve risk. Therefore, it is essential that these risks be assessed by the banks involved in accordance with high credit standards. The junior bank should review the creditworthiness of each account party on a case-by-case basis before it acquires a participation and the senior bank should review the creditworthiness of the junior bank. The examiners will ensure that these creditworthiness reviews are appropriately effected. Similarly, the Board has determined that it is appropriate that the actual assets acquired be included for purposes of assessing capital adequacy and determining compliance with capital guidelines.

(e) The Board believes that these minimum requirements reflect the nature of the relationships involved. This treatment of participations in eligible BAs is analogous to the treatment of participations in the context of loans and is consistent with safety and soundness considerations.

By order of the Board of Governors, June 20, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-17066 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 841

[Docket No. R-83-1063]

Public Housing Development; Approval of Projects With Dwelling Construction and Equipment Costs in Excess of Prototype Cost Limits

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would amend the regulations governing public housing development to require approval by HUD Headquarters for public housing projects proposed to have dwelling construction and equipment costs in excess of 100 percent of project prototype cost limits. The existing regulations permit the HUD Field Office to approve such projects. This rule is a part of the Administration's efforts to contain costs.

DATE: Comments due August 23, 1983.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the title and docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Deputy Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410 (202-426-0938). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: As part of this Administration's efforts to contain costs, the Department is withdrawing its delegation of authority to the Field with respect to approval of public housing projects proposed to have dwelling construction and equipment costs in excess of 100 percent of project prototype cost limits.

For projects funded on or after October 1, 1980, 24 CFR 841.204(e) permits HUD Field Offices to approve any projects proposed to have dwelling construction and equipment costs up to the statutory maximum of 110 percent of the applicable project prototype cost limit, but only under specified circumstances (i.e., if there is an increase in applicable project costs due to changes in HUD or local requirements not considered in developing the applicable unit prototype costs; the development of low-density housing on scattered sities; HUD-approved construction, design or material changes; or other specific causes approved by Headquarters). For projects funded before October 1, 1980, Field Offices have approval authority for projects proposed to have dwelling construction and equipment costs up to 105 percent of the project prototype cost limit, and Regional Administrators can approve projects with costs up to 110 percent.

The Department has become increasingly aware of excessive project costs and the need to contain them. Beginning in October 1981, the Department issued several guidance memoranda on the subject of public housing cost containment, relating to approval of projects with dwelling construction and equipment costs in excess of 100 percent of the applicable project prototype cost limit, unnecessary amenities and reasonable total development cost guidelines. Specifically, a memorandum to the Field dated October 22, 1981 provided that, as of that date, only the Deputy Assistant Secretary for Public and Indian Housing might approve projects with dwelling construction and equipment costs in excess of prototype cost limits, with certain exceptions as stated therein.

This proposed rule would amend § 841.204(e) to require approval by the Deputy Assistant Secretary for Public and Indian Housing for all projects proposed to have dwelling construction and equipment costs in excess of 100 percent of the applicable project prototype cost limit published pursuant to Part 841. This amendment, which would conform the regulations to current HUD policy, would be applicable to all projects, whether funded before or after October 1, 1980. The proposed rule omits the list of four circumstances justifying approval by the HUD Field Offices specified in the current regulations. Requests for approval would have to be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed to carry out the objectives of the Act. Appropriate changes will be made to HUD Handbooks 7417.7 and 7417.1 REV-1 to reflect this amendment, when effective.

The Department has determined that this rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, at the address listed above.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Since the proposed amendment is intended to have the effect of containing excessive development costs for public housing projects, it may have an economic impact on builders and/or developers of public housing, some of whom may constitute small entities, but it is not believed that the number of small entities affected will be substantial.

This rule is listed at 47 FR 48446 as item H-103-82 in the Department's Semiannual Agenda of Regulations, published on October 28, 1982, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program number and title is 14.146, Low-Income Housing-Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 841

Loan Programs—housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

Accordingly, the Department proposes to amend 24 CFR Part 841 by revising paragraph (e) of § 841.204 to read as follows:

§ 841.204 Prototype costs.

* * * * *

(e) *Project Prototype Cost Limit.* The field office shall determine the project prototype cost limit by multiplying the base project prototype cost by the prototype cost adjustment factor. The amount approvable (including, for purposes of this paragraph only, both projects being processed under this regulation and those being processed pursuant to a Program Reservation issued before October 1, 1980) by the field office for dwelling construction and equipment may not exceed the project prototype cost limit. The limit may be exceeded (in accordance with Section 6(b) of the Act) by up to ten (10) percent, with approval by the Deputy Assistant Secretary for Public and Indian Housing. A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed to carry out the objectives of the Act.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Section 6, U.S. Housing Act of 1937, 42 U.S.C. 1437d)

Dated: June 15, 1983.

Philip Abrams,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 83-17104 Filed 6-23-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 250

Indian Fishing—Hoopa Valley Indian Reservation

June 10, 1983.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend its conservation regulations governing Indian fishing on the Hoopa Valley Reservation in response to recommendations received from Indians of the reservation and from officials assigned to implement the rules. The most significant change is a closure to gillnet fishing on Monday of each week. Last year, gillnet fishing was banned during the fall chinook run from 9 a.m. Monday to 5 p.m. Wednesday of each week and from 9 a.m. to 5 p.m. on Thursdays and Fridays.

DATE: Comments must be received no later than July 25, 1983.

ADDRESS: Written comments should be addressed to the Area Director, Sacramento Area Office, Bureau of Indian Affairs, Federal Building, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Dale Risling, Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 367, Hoopa, California 95546, telephone number (916) 625-4285.

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2, 9, and 13, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection of Indian fishing rights.

Normally, tribal governments are responsible for regulation of Indian fishing on a reservation. Tribal regulation on the Hoopa Valley Indian Reservation has not been possible because not all tribes on the reservation have functioning governments. The Bureau of Indian Affairs has made major efforts to assist the Yurok Tribe in developing an organized government that will be able to participate in regulation of the Indian fishery. To date, however, these efforts have not succeeded. While the efforts to resolve the organization problems continue, the Department will continue to regulate the fishery to assure the continued existence of this valuable tribal asset.

In early February 1983, well-advertised public meetings were held at Johnson's, Weitchpec, Hoopa, and Klamath to receive comments and suggestions concerning possible changes to the fishing regulations. The meetings were attended by many members of the Indian community and some ocean trollers. The comments and suggestions made to those four meetings on the reservation were considered in developing this proposed rule.

1. It is proposed to simplify the application of the rules to minors by eliminating the special category for minors who are 17 or 18 years old. Under the proposal, all minors between the ages of 10 and 18 could not be fined more than $250 or imprisoned for an offense. Currently, children under 16 are not liable for any fine, but 17- and 18-year-olds are subject to the same fines as adults. There appears to be no good reason for treating older teenagers differently in this regard.

2. Dropping the logsheet requirement is being proposed because there has been virtually no compliance with the requirement and no reasonable enforcement mechanism is available. Even if the data were submitted, there would be serious doubts about its reliability. This action would reduce reporting requirements on the public—an important goal of the Department.

3. Deletion of the definition of "stretched measure" is also being proposed. The definition was once used in connection with a minimum mesh size requirement, but that provision was repealed a few years ago.

4. It is proposed to define the term "assist" for purposes of § 250.5(c), which prohibits Indians from permitting persons without fishing rights on the reservation to assist them. The definition makes it clear that such persons are not to have any involvement with the fishing gear while it is being used or with the fish until the fish have reached the banks of the river. It is also proposed to prohibit permitting such persons to be in a boat while it is being used in exercise of Indian fishing rights. The precise meaning of the term "assist" has been the subject of considerable debate. It is proposed to take this restrictive approach in order to assure that persons who do not have fishing rights are not fishing in violation of state laws.

5. A change in the definition of "commercial fishing" is proposed in order to make it clear that the prosecution need not prove that the intent to sell fish was formed prior to catching the fish. The fact that an attempt to sell fish was made will be sufficient to establish intent.

6. It is proposed to define "eel" to mean Pacific lamprey. Although eels and lampreys are different species, the term eel has been used in previous regulations because Indian fishers refer to lamprey as eels. The definition is being proposed to make the connection between the popular name and the scientific name. The definition also points out that the Pacific lamprey is anadromous in order to make it clear that these regulations, which govern only the taking of anadromous species, apply to lamprey or eels.

7. A change is proposed to § 250.7(c) to make it clear that persons whose identification numbers are used by someone else are guilty of an offense only if they deliberately allowed someone else to use the number. There

have been cases where nets have been taken and used with the owner's number without first getting the permission of the owner. By adding an intent requirement, the owner would be protected from liability in such cases.

8. Closure of the Indian gillnet fishery from 9 a.m. Monday to 9 a.m. Tuesday of each week is being proposed. During the fall chinook run last year gillnet fishing was banned from 9 a.m. Monday to 5 p.m. Wednesday of each week and from 9 a.m. to 5 p.m. on Thursdays and Fridays. Although the closure proposed for this year would be much shorter, it is believed to be adequate to keep the Indian harvest below 30,000 adult fall chinook. The Indian harvest last year was 14,500 adult chinook with the more stringent closures. The unusually high water levels this year are likely to reduce the in-river net harvest substantially.

9. A revision of § 250.8(p) restricting set nets near the test seining sites is being proposed because of problems that developed last year when fishers interpreted that provision as permitting nets that were set near the test site, when testing was not underway, to remain in place after testing was resumed. The revision would make clear that, although it is permissible to fish near the test sites while test seining is not underway, nets left there may be removed if they are still there when the site is needed for test fishing.

10. While making it clear that the taking of eels or lampreys is covered by these regulations, it is proposed to relax the restrictions on how they may be taken. Since there appears to be no conservation reason for limiting their harvest, only those harvest techniques that are wasteful or likely to increase the take of salmonids need be prohibited or restricted. For those reasons it is proposed to permit fishing for eels by any method other than the use of snag gear as defined in the regulations or explosives, stunning agents, or caustic or lethal chemicals.

11. Because of the longer closures last year, some conflicts developed with the need for Indians to be able to catch fish at certain times for ceremonial purposes. It is proposed to permit the Superintendent to make exceptions to closures in order to accommodate ceremonial needs. The Superintendent would also be authorized to impose any conditions necessary to protect the fish resource and to assure that fish caught under such exceptions are improperly diverted for other uses.

12. It is proposed to tranfer the responsibility for making in-season and emergency changes to the regulations from the U.S. Fish and Wildlife Service to the Bureau of Indian Affairs. This change is proposed to clarify the role of the two agencies. The BIA's responsibilities involve policymaking and management. The Fish amd Wildlife Service responsibility would continue to be to provide the biological data the BIA officials need to make sound management and policy decisions. Both agencies would continue to have a role in enforcement of the regulations.

13. It is proposed to make minor revisions in § 250.12 to make it clear that fishers are required to give only those biologists, technicians and enforcement officers carrying out their duties under these regulations access to harvested fish.

14. Listing of the specific provisions of the general rules applicable to Courts of Indian offenses, 25 CFR Part 11, that apply to this court is proposed. Some provisions do not apply because of the special situation on the Hoopa Valley Reservation and some have been superseded by specific rules applicable to this court. Listing applicable sections could reduce some legal disputes in the court.

15. It is proposed to assign the responsibility for filing court papers to the prosecutor rather than the police officer. The current arrangement was developed before permanent prosecutors were in place. Filing court papers is normally the responsibility of the prosecutor.

16. It is proposed to reduce the waiting time between the publication of a notice that unidentified gear or fish have been seized and the forfeiture hearing from 14 to ten days. Experience has shown that the longer period does not result in more nets being claimed. The shorter period will help expedite the court's work.

17. It is proposed to authorize in a public sale the sale of fishing gear or fish that have been forfeited. Authority to establish the procedures would be delegated to the Superintendent. The BIA continues to hold gear that was forfeited years ago. If this change is adopted, it is anticipated forfeited gear would be disposed of much more promptly.

18. A revision of § 250.16 is proposed to notify the public that persons who assault or interfere with any Interior Department employee in the performance of duties under these regulations are subject to prosecution in Federal court. It is also proposed to make such offenses punishable in the Court of Indian Offenses when committed by anyone over whom that court has jurisdiction.

19. A new section dealing with jury trials is proposed. Under this proposal the court could deny a criminal defendant a right to a jury trial in cases where it concludes at the outset that no jail sentence will be imposed. Currently there is a right to a jury trial under 25 CFR 11.7 where, upon preliminary hearing by the court, a substantial question of fact is raised. The Indian Civil Rights Act, however, requires a jury trial only for an offense punishable by imprisonment. 25 U.S.C. 1302(10). Under the proposed rule, the court could establish at the outset that a particular offense will not be punishable by imprisonment. Many of the offenses that come before the court are comparatively minor infractions for which a jail sentence is clearly inappropriate. Under the current rules, however, defendants in such cases have an absolute right to a jury trial. The expenses associated with holding jury trials in such cases is out of proportion to the magnitude of the offense. Jury trials are frequently not available in non-Indian courts to persons accused of misdemeanors because the U.S. Constitution requires jury trials in criminal cases only for offenses punishable by imprisonment for more than six months. *Codispoti* v. *Pennsylvania*, 418 U.S. 506, 512 (1974).

The primary authors of this document are David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, and John Bushman, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior.

It has been determined that this proposed rule is not a major rule as that term is defined in Executive Order 12291 of February 17, 1981, 46 FR 13193, because it will have a limited economic impact on a small number of people.

For the same reason, it has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96–354.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may

submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the Addresses section of the preamble. Comments must be received on or before the date specified in the preamble.

List of Subjects in 25 CFR Part 250

Fisheries, Fishing, Indians—lands, Penalties.

It is proposed to amend 25 CFR Part 250 as follows:

PART 250—INDIAN FISHING—HOOPA VALLEY RESERVATION

1. Section 250.1 is amend by removing paragraph (d) of § 250.1 and revising section heading to read as follows:

§ 250.1 Purpose.

* * * * *

2. By removing paragraph (e) of § 250.3, redesignating paragraph (f) of that section as paragraph (e) and by revising paragraph (d) of that section to read as follows:

§ 250.3. Application.

* * * * *

(d) Minors between the ages of 10 and 18 are eligible to receive identification cards and are subject to the provisions of this Part, but are not subject to a fine of more than $250 or incarceration.

* * * * *

e. By removing from § 250.4 the definitions of "logsheet" and "stretched measure" and by revising the definition of "commercial fishing" and adding two new definition in alphabetical order to read as follows:

§ 250.4 Definitions.

"Assist" as used in § 250.5(c) means providing aid to an eligible Indian fisher in placing fishing gear, checking it, removing it from the water, removing any fish caught with the gear or removing fish from the boat.

* * * * *

"Commercial fishing" means the taking of fish or fish parts with the prior or subsequent intent to sell or trade them or profit economically from them. It does not include accepting payment for the labor involved in catching fish for the elderly or incapacitated under § 250.8(t) of this Part where payment is not based on the number or weight of fish caught.

* * * * *

"Eel" means Pacific lamprey, an anadromous fish.

* * * * *

4. By revising paragraph (c) of § 250.5 to read as follows:

§ 250.5 Eligible fisher—eligible Indian.

* * * * *

(c) Except as provided under § 250.3(c), an eligible Indian who allows an ineligible person to assist in an Indian fishery on the reservation or who permits an ineligible person to be in a boat while it is being used in the exercise of Indian fishing rights is subject to the penalties set out in § 250.15.

§ 250.6 [Removed]

5. By removing paragraph (d) of § 250.6.

6. By revising the section heading and paragraph (c) of § 250.7 to read as follows:

§ 250.7 Identification and use of gear.

* * * * *

(c) Except as may be provided for elsewhere in this Part, no eligible Indian fisher may intentionally allow his or her identification number to be used on a net that he or she is not attending or fishing.

* * * * *

7. By revising paragraphs (b) and (p) and adding paragraphs (w) and (x) to § 250.8 to read as follows:

§ 250.8 Permissible and prohibited fishing.

* * * * *

(b) Fishing with gillnets is prohibited from 9 a.m. Monday until 9 a.m. Tuesday of each week. Except as provided elsewhere in this Part, fishing with gillnets, is permitted at all other times.

* * * * *

(p) No set-net fishing is allowed within 400 feet of a test seining operation conducted by either the U.S. Fish and Wildlife Service or the California Department of Fish and Game. Set-nets placed in an area normally used for test seining may be removed by law enforcement officers and held for the owner to claim if their removal is necessary in order to permit test seining operations to be conducted

* * * * *

(w) Eels may be taken by any method except by the use of snag gear as defined in § 250.4, explosives, stunning agents or caustic or lethal chemicals in any form.

(x) Ceremonial fishing may be conducted during closed hours pursuant to a special permit issued by the Superintendent of the Northern California Agency. The Superintendent may impose any conditions on the permittee that are necessary to protect the fish resource or to assure that all fish caught are used exclusively for ceremonial purposes.

8. By revising paragraphs (a) and (b) of § 250.11 to read as follows:

§ 250.11 In-season and emergency regulations.

(a) The Area Director of the Bureau of Indian Affairs is authorized to make in-season and emergency changes to the regulations when necessary to ensure proper management of the fisheries of the Klamath and Trinity Rivers. This authority includes the following powers:

(1) To close all or part of an Indian fishery when, in the Area Director's judgment, a closure is necessary to meet conservation needs.

(2) To re-open all or part of an Indian fishery when, in the Area Director's judgment, that action will not jeopardize spawning escapement.

(b) In-season or emergency regulations shall be effective 24 hours after publication in the *Eureka Times Standard*. They shall stay in effect until modified or rescinded by the Area Director. Failure to complete subsequent provisions of this section shall not affect the validity of any in-season or emergency adjustment.

* * * * *

9. By revising paragraphs (a) and (c) of § 250.12 to read as follows:

§ 250.12 Fish catch reporting.

(a) All eligible fishers shall allow access to harvested fish to authorized biologists, technicians, and enforcement officers for the purpose of monitoring the harvest and to check for compliance with the provisions of this part.

* * * * *

(c) The U.S. Fish and Wildlife Service will compile in-season catch data from information obtained from spot checks of fishers, landing counts, creel censuses and other information collected by State, Federal and tribal officials.

10. By revising § 250.14 to read as follows:

§ 250.14 Enforcement.

(a) Eligible Indians who violate the provisions of this Part or any in-season or emergency adjustments promulgated under this Part are subject to prosecution before the Court of Indian Offenses of the Hoopa Valley Indian Reservation. The Indian Civil Rights Act and, except as modified by this Part, 25 CFR 11.5(a) and (b), 11.6–11.8, 11.11, 11.12(a), 11.14–11.19, 11.21, and 11.33–11.37 apply.

(b) *Citations.* Law enforcement officers may issue citations to any eligible Indian the officer believes has committed a violation of the regulations of this Part. Such citation shall state when and where the person is charged.

(c) *Seizure.* Confiscation of fishing gear and fish.

(1) Any net or other fishing gear used in violation of these regulations and any fish caught or possessed in violation of these regulations may be seized by a law enforcement officer. Fishing gear or fish so seized shall be held pending disposition by court order except as specifically provided in these regulations.

(2) When a net or other fishing gear is seized and the owner is unknown to the enforcement officer, the prosecutor shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the court for a judgment forfeiting the fishing gear and/or fish. When a net or other fishing gear is seized and the fishing gear is marked with an identification number the prosecutor shall, without unreasonable delay, notify by registered mail the holder of the identification number that his or her fishing gear has been seized. The notice of seizure shall state the date of seizure, the place of seizure, and the time of seizure and shall direct the person whose gear has been seized to notify the court directly to arrange to have the matter placed on the court's calendar.

(3) Upon filing of such petition, the enforcement officer shall set out details of the seizure, citing time, place, and location of such seizure. A notice of seizure shall be left at the site where the fishing gear or fish were confiscated. The court upon receipt of the petition shall fix a time for a hearing and cause notices for unidentified gear or fish to be posted and published. A notice shall be published at least ten days prior to the forfeiture hearing at both courthouses of the Court of Indian Offenses. The clerk of the court shall publish notices in local news media having circulation on the reservation. Such notices shall be published for a period of five days and shall set forth the reason for the hearing. Once a person claims seized fishing gear of fish, the publication of the notice shall cease.

(4) Any fishing gear forfeited shall be sold at public sale as directed by the Superintendent.

(5) Any person who satisfies the court that he or she is the owner of any fishing gear or fish seized under this section may intervene in the forfeiture proceeding on behalf of the fishing gear or fish.

(6) If there is no objection by the seizing agency, nor any Federal statutory or regulatory prohibition, all fish seized may be sold by the Superintendent, Northern California Agency, and the proceeds held pending adjudication of the charge that was the basis of the seizure. Proceeds from sales of fish that are found, upon adjudication, to have been taken in violation of these regulations shall be transferred to a special Hoopa-Yurok Fund in the U.S. Treasury. Nothing in this section shall be construed to prevent undercover law enforcement officers from selling fish as part of their duties or to make legal the purchase of fish from such officers.

(d) *Complaint procedures.* Any person regulated under this Part may file a complaint in writing against a law enforcement officer. The Superintendent of the Northern California Agency shall, without unreasonable delay, conduct an investigation into any allegation of misconduct by the BIA law enforcement officer in carrying out the duties of that office. Upon completion of the investigation, the Superintendent shall make available to the complainant, upon written request, the findings of the investigation.

11. By revising § 250.16 to read as follows:

§ 250.16 Forceable assault and impeding a Federal employee.

(a) Any person who forcibly assaults, resists, or impedes, or interferes with an employee of the Interior Department in the performance of his or her duties under this Part may be prosecuted in Federal court under 18 U.S.C. 111.

(b) Any eligible Indian who forcibly assaults, resists, impedes, or interferes with a law enforcement officer, biologist or other authorized employee in the performance of his or her duties under this Part shall be fined not more than $500, sentenced to jail for a period not to exceed six month and have his or her fishing rights suspended for not more than one hundred eighty days during the fall chinook runs.

12. By adding a new § 250.19 to read as follows:

§ 250.19 Juries.

(a) A jury trial shall be provided upon demand by the defendant in any case in which the court determines, assuming all allegations are proved true, that a jail sentence may be imposed.

(b) A list of eligible jurors shall be developed from the list of eligible Indians.

(c) A jury shall consist of six eligible Indians chosen by the judge pursuant to rules promulgated by the court.

(d) No juror may be seated unless the court concludes beyond a reasonable doubt that he or she is able to render a fair and impartial verdict.

(e) The judge shall instruct the jury in the law governing the case and the jury shall reach a verdict of guilt or innocence as to each count charged.

(f) Verdicts shall be rendered by unanimous vote.

(g) The jury shall return a verdict of guilty if it concludes beyond a reasonable doubt that the defendant committed the offense with which he or she is charged.

(h) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. § 206(a)(1), and any of its subsequent revisions, plus fifteen cents per mile travel costs. Each juror shall receive the travel allowance and pay for a full day (eight hours) for any portion of a day served.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

June 10, 1983.

[FR Doc. 83-17113 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[LR-33-83]

Imposition of Taxes on Hazardous Waste; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the collection of the tax on hazardous waste, petroleum and certain chemicals. Changes to the applicable tax law were made by the Hazardous Substance Response Revenue Act of 1980. These proposed regulations are the same as the temporary regulations adopted under the Hazardous Substance Response Revenue Act of 1980 for the collection of environmental taxes on petroleum and certain chemicals, except that they would also apply to the collection of the tax on hazardous waste. Thus, in addition to affecting persons who pay environmental taxes on petroleum and certain chemicals, these regulations affect owners and operators of qualified hazardous waste disposal facilities and provide them with the guidance needed to comply with the law.

DATES: Written comments and requests to speak at the public hearing must be delivered or mailed by August 23, 1983. The amendment is proposed to be effective with respect to the collection of tax on hazardous waste after September 30, 1983 and, with respect to the tax on petroleum and certain chemicals, after March 31, 1981.

ADDRESS: Send comments and requests to speak at the public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W. Washington, D.C. 20224 Attention: CC:LR:T (LR–33–83).

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 Attention: (CC:LR:T) 202–566–4336, not a toll-free call.

SUPPLEMENTARY INFORMATION: .

Background

A new Part 52, Environmental Taxes on Petroleum and Certain Chemicals and Hazardous Waste, is added by this document to Title 26 of the Code of Federal Regulations. This document contains proposed amendments to the regulations relating to certain procedural requirements under sections 6011, 6071, 6091, 6151 and 6302 of the Internal Revenue Code of 1954 (Code), to conform the regulations to sections 211 (Pub. L. 96.510, 94 Stat. 2797) and 231 (a) (Pub. L. 96–510, 94 Stat. 2803) of the Hazardous Substance Response Revenue Act of 1980 (Act) and are to be issued under the authority contained is sections 6011 (68A Stat. 732, 26 U.S.C. 6011), 6071 (68A Stat. 749, 26 U.S.C. 6071), 6091 (68A Stat. 752, 26 U.S.C. 6091), 6302 (68A Stat. 775, 26 U.S.C. 6302), and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

On July 22, 1981, temporary regulations were published in the Federal Register (46 FR 37631) under sections 6011, 6071, 6091, 6151, and 6302 of the Code. The temporary regulations related to procedural requirements for the payment of environmental taxes under sections 4611, 4612, 4661, and 4662 of the Code to conform to section 211 of the Hazardous Substance Response Revenue Act of 1980 (Pub. L. 96–510, 94 Stat. 2797).

Section 231 (a) of the Act added sections 4681 and 4682 to the Code, which sections generally impose a tax on the receipt after September 30, 1983, of hazardous waste at a qualified hazardous waste disposal facility. The proposed regulations provided by this document add a new Part 52 which is the same as the temporary regulations published on July 22, 1981, except that it would also apply the collection procedures to the tax on hazardous waste.

Comments; Public Hearing

Before adoping these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for inspection and copying. A public hearing has been scheduled and will be held on September 1, 1983. Notice of the time and place of the hearing appears in the proposed rules section of this issue of the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington D. C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, A Regulatory Impact Analysis is not required. Pursuant to 5 U.S.C 605 (b), The Secretary of the Treasury has certified that this rule if issued will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis is therefore not required. The proposed regulations do not have a significant economic impact on small entities because the taxpayer who is required to pay environmental taxes will merely complete Form 720 (Quarterly Federal Excise Tax Return). The information needed to fill out this form is readily available to the taxpayer.

Drafting Information

The principal author of these proposed regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects in 26 CFR Part 52

Environmental Taxes on Petroleum and Certain Chemicals, Hazardous waste.

Proposed amendments to the Regulations

The proposed amendment to 26 CFR is as follows:

Paragraph. Part 57 of 26 CFR entitled "Temporary Regulations in Connection with Environmental Taxes" is redesignated as Part 52 and revised to read as follows:

PART 52—ENVIRONMENTAL TAXES ON PETROLEUM AND CERTAIN CHEMICALS AND HAZARDOUS WASTE

Sec.

Authority. Secs. 6011 (68A Stat. 732, 26, U.S.C. 6011), 6071 (68A Stat. 749, 26 U.S.C. 6071), 6091 (68A Stat. 752, 26 U.S.C. 6091), 6302 (68A Stat. 775, 26 U.S.C 6302), and 7805 (68A Stat. 917, 26 U.S.C 7805) Internal Revenue of 1954.

§ 52.6011(a)–1 Returns.

(a) *In general.* Effective as of April 1, 1981, liability for tax imposed under section 4611, Imposition of Tax on Petroleum, or section 4661 Imposition of Tax on Certain Chemicals, shall be reported on Form 720, Quarterly Federal Excise Tax Return. Effective as of October 1, 1983, liability for tax imposed under section 4681, Imposition of Tax on Hazardous Waste, shall be reported on Form 720, Quarterly Federal Excise Tax Return. Except as provided in paragraphs (b)(1) and (2) of this section, a return on Form 720 shall be filed for a period of one calendar quarter beginning with the quarter ending June 30, 1981, in the case of the taxes imposed under sections 4661 and 4611, and the quarter ending December 31, 1983, in the case of the tax imposed under section 4681. Every person required to make a return on Form 720 for the return period ended June 30, 1981, in the case of the taxes imposed under sections 4611 and 4661, or for the return period ended December 31, 1983, in the case of the tax imposed by section 4681, shall make a return for each subsequent calendar quarter (or month or semimonthly period if required by the district director under paragraph (b) of this section), whether or not liability was incurred for any tax reportable on such return for such return period, until a final return has been filed in accordance with § 52.6011(a)–2. Every person not required to make a return on Form 720 for the return period ended June 30, 1981, in the case of the taxes

imposed under sections 4611 and 4661, or for the return period ended December 31, 1983, in the case of the tax imposed under section 4681, shall make a return for the first calendar quarter thereafter in which the person incurs liability for tax imposed under section 4611, 4661, or 4681 and shall make a return for each subsequent calendar quarter (or month or semimonthly period if required by the district director under paragraph (b) of this section) until a final return has been filed in accordance with § 52.6011(a)–2.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any taxpayer who is required to make a deposit of taxes under the provisions of § 52.6302(c)–1 has failed to make deposits of such taxes, such taxpayer shall be required, if so notified in writing by the district director, to file a montly or semimonthly return on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 52.6302(c)–1(c)(1)) in which the notice is received and for each calendar month or semimonthly period thereafter until the taxpayer has filed a final return or is required to make returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* At the district director's discretion, the taxpayer may be notified in writing that the taxpayer is required to make a quarterly or monthly return if the taxpayer has been filing returns for a semimonthly period or is required to make a quarterly or semimonthly return, if the taxpayer has been filing monthly returns.

(3) *Return for period change takes effect.* If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be made for the month or semimonthly period in which the notice is received and all prior months or semimonthly periods which are not includible in a prior period for which the taxpayer is required to file a return. If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be made is the last month or semimonthly period of the calendar quarter in which such notice is received. If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which such notice is received.

§ 52.6011(a)–2 Final returns.

(a) *In general.* Any person who is required to make a return on Form 720 pursuant to § 52.6011(a)–1, and who in any return period ceases operations in respect of which the person is required to make a return on such form, shall make such return for such period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720, because of temporary or seasonal suspension of business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.* There shall be executed as a part of each final return a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of a taxpayer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or transfer took place. If no such sale or transfer occurred or the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

§ 52.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under paragraph (a) of § 52.6011(a)–1 for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period. For the purpose of the immediately preceding sentence, a deposit which is not required by such regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of any deposit will be determined by the earliest date stamped on the applicable deposit form by an authorized financial institution or by a Federal Reserve bank.

(b) *Monthly and semimonthly return*—(1) *Monthly returns.* Each return required to be made for a monthly period under paragraph (b)(1) of § 52.6011(a)–1 shall be filed not later than the 15th day of the month following the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made for a semimonthly period under paragraph (b)(1) of § 52.6011(a)–1 shall be filed not later than the 10th day of the semimonthly period following the period for which it is made.

(c) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration). Section 7502, relating to timely mailing treated as timely filing and paying, shall apply to the same extent it applies to the collection of taxes under Chapter 32, relating to Manufacturers' Excise Taxes.

(d) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

§ 52.6091–1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Md. 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, unless the principal place of business or legal residence of such person, or the

principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.* Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with a service center, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.* Except as provided in paragraph (e)(3) of this section, and notwithstanding paragraphs (1) and (2) of section 6091 (b) and paragraph (d) of this section—

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (b) of this section.

(3) *Exceptions.* This paragraph (e) shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

52.6151-1 Time and place for paying tax shown on return.

The tax required to be reported on each tax return required under this part is due and payable to the internal revenue officer with whom the return is filed at the time prescibed in § 52.6071(a)-1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks or authorized financial institutions in depositing the taxes, see § 52.6302(c)-1.

§ 52.6302(c)-1 Use of Government depositaries.

(a) *Requirements—(1) Monthly deposit.* Except as provided in paragraph (a)(2), (a)(3), or (a)(4) of this section, if for any calendar month, other than the last month of a calendar quarter, any person required to file a quarterly excise tax return on Form 720 has a total liability of more than $100 for all excise taxes reportable on such form, the amount of such liability for taxes (to which this part relates) shall be deposited with a Federal Reserve bank or authorized financial institution on or before the last day of the month following such month.

(2) *Semimonthly Deposit.* This paragraph (a)(2) applies to excise taxes (to which this part relates) which are reportable on Form 720 by any person whose total liability for all excise taxes reportable on Form 720 for any calendar month in the preceding calendar quarter exceeds $2,000. In any case to which this paragraph (a)(2) applies (except as provided in paragraphs (a)(3) or (a)(4) of this section), the excise tax payable under this part for a semimonthly period (as defined in paragraph (c)(1) of this section) shall be deposited by such person in a Federal Reserve bank or authorized financial institution on or before the depositary receipt date (as defined in paragraph (c)(2) of this section). A person will be considered to have complied with the requirements of this paragraph (a)(2) for a semimonthly period if—

(i) The person's deposit for such semimonthly period is not less than 90 percent of the total amount of the excise taxes (to which this part and Parts 46, 48, and 49 relate) reportable on Form 720 for such period and if such period occurs in a month other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following such month; or

(ii) The person's deposit for each semimonthly period in the month is not less than 45 percent of the total amount of the excise taxes (to which this part and Parts 46, 48, and 49 relate) reportable on Form 720 for the month, and if such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following such month; or

(iii) The person's deposit for each semimonthly period in the month is not less than 50 percent of the total amount of the excise taxes (to which this part and Parts 46, 48, and 49 relate) reportable on Form 720 for the second preceding calendar month, and if such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following such month;

(iv) The requirements of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section (if applicable under the last sentence of this paragraph (a)(2)) are satisfied for the first semimonthly period in the month and the person's deposit for the second semimonthly period in such month is, when added to the deposit for such first semimonthly period, not less than 90 percent of the total amount of the excise taxes to which this part relates reportable by the person on Form 720 for such month, and if such period occurs in a month other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following such month.

Accordingly, a person who makes deposits in accordance with the provisions of paragraph (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section will not find it necessary to keep books and records on a semimonthly basis. However, paragraph (a)(2)(ii) or (a)(2)(iii) of this section shall not apply to any such person who normally incurs in the first semimonthly period in each month more than 75 percent of the total excise tax liability (to which this part and Parts 46, 48, and 49 relate) for the month.

(3) *Exception.* The provisions of this section shall not apply with respect to taxes for the month or the semimonthly period in which the taxpayer receives notice from the district director that returns are required under paragraph (b)(1) or (2) of § 52.6011(a)-1, of any subsequent month or semimonthly period for which a return is required.

(4) *No deposit for the calendar quarter ending June 30, 1981.* No deposit is required under the provisions of this part 52 with respect to the taxes payable for the calendar quarter ending June 30, 1981.

(b) *Special requirements.* The provisions of this paragraph (b) apply to every person (whether or not required by paragraph (a)(1) or (a)(2) of this section to make a deposit of taxes) required to file a quarterly excise tax return on Form 720 for a calendar quarter who has a total liability for all excise taxes (to which this part and Parts 46, 48, and 49 relate) reportable on such form which exceeds by more than $100 the total amount of taxes deposited pursuant to paragraph (a)(1) or (2) of this section for the quarter. The person shall, on or before the last day of the month following the calendar quarter for which the return is required to be filed, deposit with a Federal Reserve bank or authorized financial institution the full amount by which the liability for all excise taxes reportable on such form for the calendar quarter exceeds the amount of excise taxes previously deposited for that calendar quarter.

(c) *Definitions.* The terms enumerated in this section are to be defined in the following manner:

(1) *Semimonthly period.* A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of the month.

(2) *Depositary receipt date.* The "depositary receipt date" is the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(d) *Depositary forms*—(1) *In general.* A person required to make deposits by paragraphs (a) (1) or (2) or (b) of this section may make one, or more than one, remittance of the amount required to be deposited. An amount of such tax which is not required to be deposited may nevertheless be deposited if the person liable for the tax so desires.

(2) *Remittance.* Each remittance of an amount required to be deposited shall be accompanied by a Federal Tax Deposit, Excise Taxes, form (Form 504) which shall be prepared in accordance with the applicable instructions. The remittance, together with Form 504, shall be forwarded to a Federal Reserve bank, or, at the election of the person making the remittance, forwarded to a financial institution authorized in accordance with Treasury Department Circular No. 1079, 31 CFR Part 214, to accept remittances of the taxes for transmission to a Federal Reserve bank. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by a Federal Reserve bank or by the authorized financial institution, whichever is earlier. Section 7502(e), relating to timely mailing treated as timely filing and paying, shall apply to the same extent it applies to the collection of taxes under Chapter 32, relating to Manufacturers' Excise Taxes. Each person making deposits pursuant to this section shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return and pay (or deposit by the due date of such return) the balance, if any of the taxes due for such period.

(3) *Time deemed paid.* Amounts deposited under paragraph (d)(2) of this section shall be considered as paid on the last day prescribed for filing the return for the tax (determined without regard to any extension of time for filing such return), or at the time deposited, whichever is later.

(4) *Procurement of prescribed forms.* Copies of Form 504 will so far as possible be furnished persons required to deposit. The person may secure the forms or additional forms by applying for them to the district director or director of a service center and by supplying the person's name, identification number, address, the type of tax, and the taxable period to which the deposits will relate.

A person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the proper form should make application for it in ample time to make the required deposit within the time prescribed.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 83-16997 Filed 6-23-83; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 52

[LR-33-83]

Imposition of Taxes on Hazardous Waste; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the imposition of taxes on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

DATES: The public hearing will be held on Thursday, September 1, 1983 beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by August 18, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-33-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6011 of the Internal Revenue Code of 1954. The proposed regulations appear in the Proposed Rules Section of this issue of the **Federal Register** (See FR Doc. 83-16997).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than August 18, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-16998 Filed 6-23-83; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2353-3]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The California Air Resources Board (ARB) submitted to EPA Yolo-Solano Air Pollution Control District (APCD) new source review rules for incorporation into the State Implementation Plan (SIP). EPA is proposing to approve these rules, as they have been evaluated and found in accordance with EPA policy and 40 CFR Part 51.

DATE: Comments must be received by July 25, 1983.

ADDRESSES: Written comments should be addressed to the EPA Region 9, Air Programs Branch (address below). Copies of the rules are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812

Yolo-Solano Air Pollution Control District, 323 First Street, Suite 5, P.O. Box 1006, Woodland, CA 95695.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1980 the California Air Resources Board (ARB) submitted to EPA new source review Rules 3.4.1 "Standards for Granting Applications" and 3.4.2 "Conditional Approval" for the Yolo-Solano Air Pollution Control District (APCD).

On June 18, 1982 (47 FR 26379) EPA announced the availability of these SIP revisions along with revisions for several other counties in California and took final action to approve them. In that notice, EPA advised the public that it was deferring the effective date of its approval for 60 days. EPA announced that, if, within 30 days of the publication of the approval notice, EPA received notice that someone wished to submit adverse or critical comments, EPA would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice announcing this special procedure on September 4, 1981 (46 FR 44476.)

On July 12 and August 24, 1982, comment letters were received by EPA in which James A. Koslow, Air Pollution Control Officer of the Yolo-Solano APCD, objected to EPA's approval of the two rules.

EPA did not receive notice or comments from the public on the approval of the other revisions to the California SIP, as listed in the **Federal Register** of June 18, 1982 (47 FR 26379).

Discussion

These rules, in accordance with normal SIP procedures, were initially adopted and submitted by the Yolo-Solano APCD to the ARB which, in turn, reviewed and submitted them to EPA. During this process, the ARB held a public hearing and renumbered and deleted portions of the District's rules. This action was taken by the ARB to make technical corrections and to improve the consistency of these rules with other APCD's throughout the State.

Mr. Koslow comments that this action changes and interferes with the indexing sequence of rules adopted by the District. He recommends that EPA adopt into the SIP the rules adopted and recognized by the District.

However, the Clean Air Act clearly designates the State as the responsible agency for adoption and submittal of the SIP. EPA can only take approval/disapproval action on the rules submitted by the ARB. We cannot rewrite the rules. Therefore, Mr. Koslow's objective cannot be addressed by EPA.

Furthermore, EPA does not find any substantive deficiencies in the ARB submitted rules. These rules are consistent with requirements of Section 110 of the Clean Air Act and 40 CFR Part 51.

Proposed Action

Therefore, in accordance with the procedure described above, EPA is today proposing to approve Rules 3.4.1 and 3.4.2. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Elsewhere in today's **Federal Register**, EPA is taking final action to withdraw its June 18, 1982 approval of Rules 3.4.1 and 3.4.2 of the Yolo-Solano APCD.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Sections 110(a) and 301(a), Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Dated: April 11, 1983.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-17040 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-2-FRL 2368-3]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On November 10, 1980 (45 FR 74472) the New York State Implementation Plan for the Niagara Frontier area (Erie and Niagara Counties) was conditionally approved with regard to its ability to meet the sulfur dioxide control requirements of Part D of the Clean Air Act. This notice discusses the two conditions on approval involving sulfur dioxide, and announces the Environmental Protection Agency's intent to find the provisions of these conditions met.

DATE: Comments must be received on or before July 25, 1983.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittals are available for inspection during business hours at the following locations:

Environmental Protection Agency, Region II—Room 1005, 26 Federal Plaza, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

New York State Department of Environmental Conservation, Region 9, 600 Delaware Avenue, Buffalo, New York 14202.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Room 1005, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Introdution

On November 10, 1980 (45 FR 74472) the Environmental Protection Agency (EPA) conditionally approved revisions to the New York State Implementation Plan (SIP) addressing attainment of the national ambient air quality standards for sulfur dioxide, carbon monoxide and ozone in areas of the Niagara Frontier Air Quality Control Region (Erie and Niagara Counties) designated as nonattainment for these pollutants. The reader is referred to EPA's April 29, 1980 notice of proposed rulemaking (45 FR 28371) and to the aforementioned November 10, 1980 final rulemaking notice for further background and discussion of today's proposed action.

This notice deals with the adequacy of submittals dated March 23, 1981 and August 19, 1982 from the New York State Department of Environmental Conservation (NYSDEC) in response to two of the conditions promulgated at 40 CFR 52.1674, "Part D—Conditions on approval." These conditions relate to the SIP's ability to meet the sulfur dioxide control requirements of Part D of the Clean Air Act.

II. Condition g(1)

On or before January 1, 1981 the State must submit to EPA adequate test procedures for determining the compliance of coke making equipment with the sulfur compound mass emission standard contained in Part 214.

The State in its March 23, 1981 letter submitted an interim policy memorandum to fulfill this condition. This policy memorandum lists a five-step procedure to determine compliance with New York's coke oven gas standard of 0.5 grains of sulfur compounds (measured as hydrogen sulfide) per dry standard cubic foot of total coke oven gas produced. (The State has corrected its earlier typographical error of a 0.05 grains per dry standard cubic foot limit.) This procedure includes measurement of flow rates by the use of orifice meters and analysis of the gas stream by the Tutweiller titration method, and has been implemented by the State under the authority of 6 NYCRR Section 202.3. In a revision to Part 214, currently proposed by the State, the procedure referred to above would be adopted in regulatory form.

III. Condition g(2)

On or before January 1, 1981 the State must revise § 200.1(j), "By-product coke oven battery," to provide for an acceptable definition of coke oven batteries.

On August 19, 1982 the State submitted to EPA a proposed revision to 6 NYCRR 200, "General Provisions," which was subsequently adopted on April 7, 1983. This regulation now defines "by-product coke oven battery" as follows: "A process for the destructive distillation of coal and separation of gaseous and liquid distillates from the carbon residue or coke, which includes ovens, charging systems (including larry cars, jumper pipe charging conveyors from coal storage and/or weigh bins), auxiliary gas collection systems, heating systems and flues, pushing systems, door machines, mud trucks, quench cars, quenching systems, desulfurization systems, sulfur recovery units, waste heat stacks and air cleaning devices or control equipment (including oven patching equipment, door hoods, sheds and other hoods, either movable or stationary and with or without water sprays)."

IV. EPA Proposed Action

EPA proposes to find that the State's March 23, 1981 and August 19, 1982 submissions adequately meet the two applicable conditions on its approval of the New York SIP. These corrective actions were found to be necessary to clearly define applicable sulfur dioxide emission standards. If emission limitations are not clearly defined, the emission reduction assumed in the SIP may not be valid.

Upon review, EPA believes that the State's policy memorandum contained in the March 23, 1981 letter meets the objectives of 40 CFR 52.1674(g)(1) in substance. EPA proposes to find that it fulfills the corrective action underlying the specific condition addressed in this notice. Consequently, if today's action is finalized as proposed, the condition will be deleted, based on the State's proposal to incorporate its policy memorandum into regulatory form.

V. Public Comment

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted with regard to whether the action proposed with respect to the New York SIP for sulfur dioxide control in the Niagara Frontier area should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Sections 110 and 172 of the Clean Air Act and applicable EPA requirements in 40 CFR Part 51.

Comments received by July 25, 1983, will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it will reduce, rather than increase, the burden on the regulated community. In effect, if this action is promulgated, two conditions on EPA's approval of the New York SIP will be removed.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only revokes a conditional approval requirement. It imposes no new requirements.

The Office of Management and Budget (OMB) has exempted this regulation from OMB review requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301, Clean Air Act, as amended (42 U.S.C. 7410, 7472, and 7601))

Dated: May 9, 1983.

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 83-17031 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

(Docket No. CC 81-216; RM-2845; RM-2930; RM-3195; RM-3206; RM-3227; RM-3283; RM-3316; RM-3329; RM-3348; RM-3501; RM-3526; RM-3530; RM-4054; FCC 83-268)

Amendment of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; and Inquiry Into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules

AGENCY: Federal Communication Commission.

ACTION: Third notice of proposed rulemaking.

SUMMARY: The Commission proposes to accommodate the registration of channel service units used in conjunction with American Telephone and Telegraph Company's Dataphone Digital Service. Included is a decision rejecting retention of such units as part of the communications service itself. The rules proposed are those offered by the Independent Data Communications Manufacturers Association in RM-3530, which was discussed initially in Notice of Proposed Rulemaking and Inquiry in this Docket, 46 FR 22215 (April 16, 1981). The Commission also proposes a new simulator circuit for registration testing, which was offered in RM-4054.

DATES: Comments due on or before July 29, 1983. Reply comments due on or before August 17, 1983.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Domestic Facilities Division, Federal Communications Commission, (Common Carrier Bureau), Washington, D.C. 20554, (202) 634-1800.

List of Subjects in 47 CFR Part 68

Communications common carriers, Digital equipment.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 603, the FCC certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities, though users of Dataphone Digital Service will have a choice of source for their channel service units.

Third Notice of Proposed Rulemaking

In the matters of Petitions seeking amendment of Part 68 of the Commission's Rules concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network and Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules; CC Docket No. 81-216; RM-2845, RM-2930, RM-3195, RM-3206, RM-3227, RM-3283, RM-3316, RM-3329, RM-3348, RM-3501, RM-3526, RM-3530, RM-4054.

Adopted: June 2, 1983.

Released: June 14, 1983.

By the Commission; Commissioner Fogarty not participating.

I. Introduction

1. By a *Notice of Proposed Rulemaking and Notice of Inquiry* in Docket No., CC 81-216 (NPRM-NOI), 85 FCC 2d 868 (1981), the Commission sought public comment on a number of rulemaking petitions and on its inquiry into other issues germane to Part 68 of the Commission's rules.[1] Part 68 provides the technical and procedural standards under which direct electrical connection of customer-provided telephone equipment, systems and protective apparatus (in the aggregate "customer premises equipment" or "CPE") may be made to the nationwide network without harm and without a requirement for the interposition of telephone company-provided protective circuit arrangements (PCAs).[2] Part 68, the Commission noted, was developed, among other purposes, to eliminate the discrimination fostered by telephone companies that had required the interposition of telephone company-provided PCAs where customer-provided terminal equipment was directly connected yet did not require such PCAs where comparable telephone company-provided terminal equipment was connected.

2. In the Notice of Proposed Rulemaking (NPRM) portion of the NPRM-NOI proceeding, the Commission considered, among other things, a petition for rulemaking filed by Independent Data Communications Manufacturers Association (IDCMA), RM-3530, which sought amendment of Part 68 of the rules to permit the registration and direct connection of customer-provided equipment to American Telephone and Telegraph Company's (AT&T) Digital Data System [or Dataphone Digital Service] (DDS).[3] DDS is a digital communications service which terminates at the customer's premises in either a telephone company-provided channel service unit (CSU) or data service unit (DSU). The CSU provides a controlled, amplitude balanced interface in a modified bipolar format to the customer's data equipment. It also contains remote loop-back circuitry to test the DDS facilities between the customer's location and the serving telephone company office. The DSU, in contrast, performs all the functions of the CSU and provides bipolar conversion, *i.e.*, proper coding and decoding of signals, timing recovery, synchronous sampling, formatting, and generation and recognition of control signals. AT&T offered both the CSU and DSU in conjunction with the provision of DDS.[4]

3. IDCMA's petition claims that AT&T's requirement for a telephone company provided CSU "imposes unreasonable and discriminatory interconnection restrictions upon all DDS subscribers". IDCMA further states that subscribers to DDS "should have the option of providing their own equipment without being forced to use and pay for interposed telephone company-supplied protective arrangements."[5] IDCMA compares the requirement for a CSU with the former requirement for a Data Access Arrangement on the switched analog network,[6] which no longer is required.

IDCMA has offered a technical proposal which encompasses specification changes involving power limitations, longitudinal balance and means of standard connection, and grandfathering of equipment presently connected to a DDS line. Equipment registered to meet the proposed specifications would be directly connectible to DDS lines.[7]

5. In the NPRM, the Commission observed that a decision to register CSU-like devices and permit their direct connection to DDS would set a precedent for interconnection with future digital private line or MTS/WATS services. It therefore decide to more closely examine the likelihood of unjust and unreasonable discrimination between customer-provided terminal equipment that includes CSU-like circuitry and telephone company-

[1] One of these issues involves the inclusion of non-system premises wiring under Part 68. A Second Notice of Proposed Rulemaking and Order (Second Notice), FCC 82-495, released November 12, 1982, proposes such rules and includes the Commission's decision not to expand Part 68 to include party line service.

[2] A PCA is an electronic device that prevents harmful voltages or signals emanating from customer-provided equipment or premises wiring from entering the telephone network.

[3] The remaining rulemaking matters will be resolved in forthcoming Commission orders.

[4] Since IDCMA filed its rulemaking petition, AT&T has unbundled the DSU and offers it as CPE, subject to stock depletion. DDS is now offered with the CSU as the standard "interface." We therefore need only consider IDCMA's petition as it relates to the CSU. (*See* AT&T Tariff No. F.C.C. 271.)

[5] IDCMA Petition at 2.

[6] Id. at 8.

[7] *See* attachment to IDCMA proposal at 1 and 2.

provided digital services that include the CSU. It also decided to examine the effects that a mandatory telephone company-provided CSU which inherently protects against network harm might have on interconnection and product innovation.

6. To complete the record on these and related issues the Commission asked interested persons to comment on the following questions:

1. Is it necessary from a technical or policy viewpoint for DDS to utilize the CSU? Is there any version of the DDS offering that does not incorporate the CSU, e.g., customer premises to customer premises DDS circuits? Is the CSU generally intended to test the service or just the facilities utilized to provide the service,

2. What is the likelihood that CSU-like devices will be required on other current or future digital service? What is the likely timetable for the introduction of digitization at the customer-loop level, for private line and MTS?

3. Will all future CSU-like devices utilized in conjuction with the servics in question 2 inherently provide network protection? Is such protection readily separable from the other functions of these devices?

4. Should CSU-like devices be considered part and parcel of their attendant services? If so, should they be required to rely solely on line-supplied power; and should they be transparent, i.e., offer no modification to the structure of the bit stream passing through them? Under what conditions if any, should such devices be registrable?

5. On which side of the network interface will the CSU-like device be located? How will its location affect the definition of "demarcation point"?

Pending resolution of these issues, the Commission decided to hold in abeyance disposition of Rm-3530 and to consider the CSU to be part and parcel of DDS for purposes of Part 68 registration.

7. While several parties offered comments to these questions, much of what was submitted revisited the arguments raised earlier in response to notice of RM-3530. Nonetheless, these comments, in conjunction with the earlier filings, provide us with an adequate record on which to base our final decisions herein. For the reasons set forth below, we reach the following conclusions: first, that CSUs and CSU-like devices [*see* para. 26] should be accorded the same regulatory treatment as customer-premises equipment (CPE) as set forth in our *Computer II* decision;[8] second, we will offer for public comment rule amendments to Part 68 offered by IDCMA in RM-3530; three, in order to expedite the interconnection of CSU and digital network channel terminating equipment [NCTE]—like devices pending adoption of final rules, we will require AT&T to file appropriate tariff revisions to institute an interim plan specifying reasonable technical standards; and, finally, we will offer for public comment a proposal submitted by AT&T to amend Section 68.3 of the rules to permit an alternative termination circuit for use in 2-wire loop simulator circuits (RM-4054).

II. Comments of the Parties

8. In the following paragraphs, we summarize the responses of the commenters to the questions raised in the NPRM.

Question 1: Need for the CSU

9. In this question, we asked interested parties to comment on the necessity, from a technical or policy viewpoint, for DDS to utilize the CSU. Further, in order to better understand the options currently available to subscribers, we asked whether DDS could be obtained without the CSU at all. Finally, we asked whether the CSU, to the extent it provides a testing function, is intended to examine the facilities alone, *i.e.*, the loops and spans, or the service, *i.e.*, the overall performance of DDS, including certain circuitry within the CSUs themselves.

10. IDCMA states that it is not necessary that DDS utilize telephone company-provided CSUs. It argues that DDS connections are actually no more than facility links between the customer premises and the Bell hub office, with "limited distance baseband modems" at the end of these links. (IDCMA Comments at 34) It argues that the "functions performed by the CSU include data transmission and testing functions which have historically been incorporated within customer-provided terminal equipment." IDCMA also argues that the test features of the CSU are "simple and incidental" to the CSU's data transmission function.

11. For its part, AT&T states that the transmit [9] and receive functions [10] of the CSU are essential to meeting the performance standards specified in its DDS Technical Reference PUB 41021.[11] AT&T argues that the CSU provides the customer with a stable interface where there exists variations in local loop facility parameters, and when technological changes occur in the network. (AT&T Comments at 65–66). Moreover, AT&T notes, the remotely activated loop-back testing function of the CSU [12] "is necessary to support the high level of availability of DDS channels" and to reduce the need for maintenance personnel visits to customer locations. (AT&T Comments at 66–67) AT&T concludes that requiring the telephone company to rely on customer-provided CSU-like devices would raise problems with regard to service operation and maintenance. (AT&T Comments at 68)

12. In its reply, IDCMA notes the underlying principle of Part 68—that direct connection to the network should be allowed—and urges that well-established, pro-competitive policies should not be abandoned merely because AT&T voices concern about joint engineering and operational requirements, service guarantees, and remote testing capabilities. Functions of the sort performed by the CSU, states IDCMA, are routinely performed by independently manufactured equipment used on other services, notably the limited distance modems used on local area data channels (LADC). (IDCMA Reply at 21–22) Further in this regard, IDCMA argues that service guarantees are largely due to terminal equipment reliability, which independent manufacturers can produce in the competitive marketplace. In response to

[8] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 439 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, —— U.S.L.W. —— (1983).

[9] According to AT&T, in the transmit direction (customer-to-network), the bipolar signal is accepted from the customer via a transformer coupling, is amplitude-controlled, amplified, and transformer coupled to the cable pairs of the local channel. (AT&T Comments at 64–65).

[10] In the receive direction, states AT&T, the signal (from network to customer) is received from the cable pairs via a transformer coupling and applied to an automatic line built-out network (which compensates for variations in cable pair characteristics), is amplified, and amplitude-controlled for transformer coupling to the customer's equipment.

[11] PUB 41021—Digital Data System Channel Interface Specification, dated March 1973.

[12] AT&T states, "to support remote maintenance activities, the CSU also includes a remotely activated loopback relay. This device, when activated by reverse of DC current on the cable pairs, disconnects the customer signal and connects the receive direction to the transmit direction, so that test signals sent from the telephone company central office (CO) are returned to the CO." (AT&T Comments at 64)

AT&T's claim for a need to provide a stable network interface, IDCMA argues that the four-wire access line used to provide DDS is itself a "clearly defined and stable interface." (ICMA Reply at 23–24)

13. In its reply, AT&T again argues that the CSU is an integral part of the network and therefore is not terminal equipment. AT&T controverts IDCMA's statement with regard to customer testing, stating that where the customer's equipment performs the testing there is no ascertainment of fault responsibility, *i.e.*, it cannot be determined whether the circuit or customer equipment is causing the service faliure. (AT&T Reply at 55) AT&T also disagrees with IDCMA's reference to the CSU as a modem, or data set, arguing that the CSU performs a broader range of functions, *viz.*, signal shaping, amplification, and remote loopback testing. (AT&T Reply at 56) AT&T again asserts its position that the "telephone company must have the means to provide, test and restore service based on the known characteristics of the channel equipment it provides and depends on, and it cannot delegate that responsibility to its customers." (AT&T Reply at 57)

14. IBM in its reply suggests that AT&T has not met its burden to demonstrate that the functions of the CSU must be performed by the telephone company. IBM states that independent manufacturers can design and produce CSU-like devices with the same degree of reliability as AT&T, and DDS performance standards can be met just as well through customer-provided equipment. (IBM Reply at 3–4) Computer and Communications Industry Association (CCIA), for its part, views the CSU as a customer premises terminal device that is not an integral part of the network. (CCIA Reply at 2)

15. In its responsive comments, IDCMA asserts that by bundling the CSU as part of the DDS offering that includes a performance guarantee, AT&T is completely foreclosing competition for the CSU. In this regard, IDCMA notes that the DDS tariff excludes customer-provided equipment from AT&T's performance guarantees [13] and argues that the best performance guarantee is a competitive marketplace for CSUs. (IDCMA Responsive Comments at 6) IDCMA also disagrees with AT&T's claim that there are active elements in the office channel unit (OCU)-CSU loop, suggesting instead, at least for low speed DDS, that there is only a local loop with no interposed devices. In its responsive comments, AT&T asserts that IBM's characteristization of the CSU as a PCA is incorrect, noting, as before, that the CSU perfomers additional functions which "are critical to the underlying maintenance and service plan of DDS." (AT&T Responsive Comments at 24–25) AT&T also states that IDCMA and others' arguments concerning the ability of independent manufactureres to produce CSUs are irrelevant; that service responsibility is the focal issue. (AT&T Responsive Comments at 26)

Questions 2 and 3: Digitization Timetable and Protection

16. In the NPRM, the Commission noted that a determination to view the CSU as an integral part of the DDS offering could set a precedent for all future digital services, with possible impact on interconnection policy generally. NPRM at para. 57. Accordingly, the Commission inquired as to the likelihood of future digital services requiring CSU-like devices, and the likely timetable for the introduction of local loop level digitization. In the event that future network plans call for a fundamental redesign of the CSU and its successors, the Commission also inquired as to the effects any such redesign would have upon the network protection feature currently offered by CSU.

17. In its comments, AT&T states that the 1.544 Mbps DDS service requires span regenerators and regeneration circuitry in the CSU. Moreover, the high speed CSU (designed model 551A) permits identification of a particular regenerator on the local loop which may have failed, a function AT&T notes is not usually needed for the lower DDS speeds (which uses a model 550A CSU). As to future services, AT&T states that it is likely that CSU-like devices will be necessary, since digital network services generally require similar terminal devices. AT&T introduces "network channel terminating equipment" (NCTE) as a general category of CSU-like devices that among other functions, perform "technical, maintenance, and channel provisioning requirements" for high speed data services. (AT&T Comments at 72)[14] As to the likely timetable for the development of digital customer loops for voiceband services, AT&T states that while the widespread use of digital technology to serve individual customers' station sets is not yet economical, it anticipates deployment of up to 64 kbps digital facilities by 1985, and widespread use by 1990.

18. In its comments on this question, IDCMA defers to the carriers' expectations regarding developing digital services. However, it expresses concern that a Commission decision to view the CSU as an integral part of DDS would impede equipment innovation for those future services. (IDCMA Comments at 35) IDCMA asserts that it makes no technical or economic sense to require a separate box to provide protective functions when both can be incorporated in customer-provided equipment.

19. IBM expresses its concern that inclusion of the CSU in the provision of network service would "result in a return to a modified form of telephone company-provided protective arrangement." IBM also counsels that interfaces to digital communications services should encourage maximum freedom of customer-to-carrier interconnection and product innovation, particularly as standards are developed in connection with the Integral Services Digital Network, a new digital communications service concept currently under development both in the United States and abroad. (IBM Reply at 5–6)

20. In its reply, IDCMA dismisses the likelihood of early changes in local loop technology, and urges that the foreseeable future offers no justification for restricting competition in the provisions of CSU-like devices. (IDCMA Reply at 25–26)

21. In response to both IBM and IDCMA regarding future CSU-like functions, AT&T states that it "will continue to cooperate with the Commission and the industry in the development and adoption of standard network interfaces for digital services." (AT&T Responsive Comments at 26–27)

Questions 4 and 5: CSU Power and Location

22. Questions 4 and 5 were intended to reveal any effects CSU-like devices might have on the network, the user's data stream, or the Commission's other proceedings, notably the development of the "demarcation point" in this docket. *See Second Notice of Proposed Rulemaking and Order, supra* at n. 1.

23. AT&T indicates that the 550A CSU used for DDS is commercially powered, and the 551A CSU is line powered. With regard to data transparency, AT&T seems to suggest that the CSU may be required to convert the electrical struture of the data bits transmitted through it, *e.g.*, bipolar to unipolar where transmission is by a lightwave facility,

[13] IDCMA refers to AT&T Tariff FCC No. 267, § 2.2.1.

[14] *See* para. 28, *infra*, for further discussion regarding the NCTE.

and in that sense is not transparent. (AT&T Comments at 74) With respect to logic structure, while the CSU does not convert the code or protocol of data signals, it may be required to convert network-to-user control signals. AT&T sates that inherent protection is not a necessary characteristic of NCTE generally, though in the case of DDS (*i.e.*, the CSU) it is. Thus, where protection is inherent, it is not separable from the other functions of the device. (AT&T Comments at 75) AT&T concludes that the NCTE must be electrically close to the demarcation point.

24. IDCMA asserts that CSU-like devices should not be required to be line powered. On the matter of transparency, IDCMA argues that the CSU is not transparent, since it contains filters and performs equalizing functions. (IDCMA Comments at 36–37)

III. Discussion

25. Over the course of the last eight years, the Commission has developed, through Part 68 of its rules, a telephone equipment registration program that permits the direct electrical connection to telephone terminal equipment to the nationwide telephone network, including certain private line services, without causing harm to the network. Underlying Part 68 was the objectives of eliminating the discrimination fostered by telephone companies that had required the interposition of their protective arrangements where customer-provided terminal equipment was directly connected yet did not require such protective arrangments where comparable telephone company-provided terminal equipment was connected. Consistent with this objective, IDCMA filed its petition for rulemaking, RM–3530, urging the adoption of rules that would extend the registration to include equipment connected to DDS. IDCMA's petition raised a threshold concern regarding identification of the interface point between telephone company service and terminal equipment, *i.e.*, whether the CSU is properly part and parcel of the common carrier service offering or whether it is separable and more properly classified as CPE. The questions we offered for public comment, at para 6, *supra*, were directed at developing a better understanding of this issue.

26. As indicated in this proceeding we are asked to make a generic determination as to whether a CSU device is properly considered part of the common carrier offering or otherwise is within the exclusive control of the carrier. In making such a determination, however, it is clear that we are not merely addressing a specific piece of equipment having the designation of a "channel service unit." AT&T, for example, views the CSU and CSU-like devices as members of the broader family of devices termed "network channel terminating equipment" (NCTE). Thus, while we discuss specific arguments made with regard to CSUs, on the basis of the record herein we see no reason to limit the decision solely to such devicies.[15] Our determination in this proceeding encompasses those CSU-like devices that serve the function equivalent of a CSU and which a carrier might seek to provide in conjunction with its offering of digital transmission capacity. Consistent with this, in this order we shall use the terms "CSU", "CSU-like", and "digital NCTE" interchangeably.

27. It is plain from the responses to question 1 that there exists no lack of manufacturing expertise among independent producers to duplicate the CSU. AT&T itself recognizes this, arguing, in essence, that it is system integrity that requires that the CSU remain part of the DDS offering. The majority of the parties commenting agree that a CSU-like device is needed in conjunction with digital services to perform loopback testing and bit regeneration capability. Both of these functions appear to be necessary if rapid, remotely controlled fault location is to be incorporated into the DDS maintenance function. The parties do not agree, however, that system integrity mandates sole telephone company provision of these functions. The focus of our attention, then, is not on whether manufacturers are capable of producing CSU-like devices or whether such devices are desirable, but whether there exist any technical or legal justification at their being provided exclusively by the telephone company, *i.e.*, by the DDS carrier.

28. The legal principle fundamental to telephone network equipment interconnection was enuciated by the Commission in *Hush-A-Phone* [16] *and Carterfone.*[17]. It is that the burden of proof rests squarely on the carriers—not the users or this Commission—to demonstrate that a particular unit or class of customer-provided equipment would cause harm to the telephone network. The essential test for this well-established principle, as applied to the case before us, is whether connection of customer-provided CSU-like devices to DDS constitutes use of the network in a way that is privately beneficial without being publicly detrimental. *See Carterphone, supra* at 424. The manufacturers assert that they can produce such CSUs, and AT&T does not controvert the assertion. The benefits of competition in this area, in addition to opening market opportunities to the manufacturer, may lead to the innovation of new terminal equipment features, such as error detection and correction curcuitry or the provision of network status or performance data, which could be of considerable benefit to users. The competitive provision of CSU-like devices will serve to benefit private use of the network—without causing public detriment.[18] In a competitive environment, it is likely that innovation will occur in CSU design. As we noted in *Computer II*, the benefits of a competitive equipment policy have been found in such areas as improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, the option of owning or leasing equipment, and competitive pricing and payment options. *Final Decision*, 77 FCC 2d 384, 439 (1980).

[15] AT&T has filed a petition for rulemaking to amend Part 68 to permit the direct connection of PBXs or similar systems to DS–1 channels (1.544 Mbps digital channels that use digital NCTE). In its reply comments in that proceeding, AT&T chracterizes the digital NCTE in a manner that leads us to conclude that it is functionally, if not electrically, identical to the CSU. Both the CSU and the digital NCTE contain circuitry that performs signal shaping, amplification and remote loopback testing and, incidentally, network protection. *See* AT&T Reply Comments in RM–4087 at 4; *see also* AT&T Comments on RM–3530 at 73. Also, we note from AT&T's Reply Comments to petitions directed to Transmittal No. 14186 (Revisions to Tariff F.C.C. Nos. 260, 262, 267, 268, 270, 271 and 273 Terrestrial Digital Circuits, or DS–1 Channels at Attached A, that the digital NCTE and customer-provided equipment will be required to handle a D4 format for the framing bit position or an Fe format for the framing bit. (*See* AT&T Compatibility Bulletin 142, The Extended Framing Format Interface Specification, dated September 29, 1981.) We note that AT&T plans to provide the Fe format as an optional offering beginning January 1, 1985. (Fe provides certain network efficiency information through the use of compatible terminal equipment and/or network equipment.) There is no indication however, that the network interface, *i.e.*, levels and wiring configurations, will differ from those currently specified for the CSU; or, if they do, whether such parameters would preclude production of digital network-compatible NCTE by independent manufacturers. The D4 and Fe formats may require changes in the design of digital NCTE devices currently offered. Nevertheless, we do not believe that such changes are affected by, or in themselves affect, the decision we make herein; nothing the parties' responses to our questions 2 and 3 leads us to any other conclusion.

[16] Hush-A-Phone Corp. v. U.S., 99 App. D.C. 190, 238 F.2d (D.C. Cir. 1956).

[17] Carterfone, 13 FCC 2d 420 (1968), *recon. denied*, 14 FCC 2d 571 (1968).

[18] Over the last seven years we have seen clear evidence of private benefit without public detriment in the analog network registration program. Some 12,000 devices have been registered by over 1,000 persons.

29. Over the years, this Commission has consistently fostered the competitive provision of terminal equipment. The apex of this evolutionary process was our *Computer II* determination that CPE should not be offered as part and parcel of a common carrier offering. Having divorced CPE from the common carrier offering while allowing carriers to provide such equipment on a competitive basis with other equipment vendors, we placed a high threshold burden on a carrier to demonstrate that a particular type of equipment located on the customer's premises should be considered part of a common carrier offering. As discussed below, we conclude that AT&T has not met its burden in this regard and that CSU-like devices should be accorded the same regulatory treatment as any other customer premises equipment, as set forth in our *Computer II* decisions.

30. We now turn to AT&T's argument that customer provision of CSUs will affect performance guarantees associated with DDS, to the detriment of the service offering. Since the CSU is an isolation device, it prevents harmful signals or voltages from subscriber equipment from affecting the DDS line or network. The signal at the input to the CSU from the network should then be the same as that at the telephone company central office, except for occasional errors due to line noise. Present DDS tariffs guarantee a maximum error rate at the CSU output. If the error rate were guaranteed instead at the CSU input, requirements for a maximum error rate could be met regardless of faulty operation of a customer-provided, CSU-like unit; performance standards could be specified at an interface point on the network side of the CSU. Customers providing their own CSUs, which most likely would contain loopback circuitry compatible with network-initiated testing requirements (as discussed below in more detail), would be responsible for telephone company maintenance expenses incurred as a result of faults in those CSUs. For example, if the carrier were testing a DS–1 facility from the central office and could not engage the loopback function of the CSU due to a failure in the customer-provided CSU, the customer would be liable for all maintenance costs associated with isolating that trouble, including the expense for dispatch of a repairperson to the customer's premises to make the final diagnosis. This burden has existed since the Commission's Part 68 program was first instituted. *See Carterfone, supra,* and *First Report and Order* in Docket No. 19528, 56 FCC 2d 593, 596 (1975). The disincentives associated with faulty CSU function likely will assure that devices of lesser quality than models currently in use will not reach the data equipment user. Although we believe that performance guarantees can be a meaningful adjunct to tariffed services, they are no less meaningful when measured at the point of demarcation, *i.e.*, on the network side of the (customer-provided) CSU. Further, if IDCMA's claim that the weak link in digital service is the terminal equipment is correct, the carrier would benefit by being responsible only to that point. It would no longer be responsible for more common problems of terminal equipment malfuction. AT&T's argument that the functions of the CSU are essential to meeting its DDS tariff performance guarantees [19] seems to support IDCMA's view. It also suggests a design threshold for manufacturers as they develop CSU-like devices for direct connection to DDS facilities. In short, we believe that competition will (1) assure the availability of suitable CSUs, and (2) not affect current tariffed DDS performance guarantees, since such guarantees will be referenced at the demarcation point. According, we do not believe that performance guarantees warrant control of the loop facilities, OCU (office channel unit), *and* CSU by the telephone company.

31. AT&T suggests that future developments in local loop technology may require changes in terminal equipment design. Such developments are generally instituted with considerable notice in the trade press, and telephone companies are under a continuing obligation to disclose anticipated network changes that affect terminal equipment interconnection. *See* Sections 64.702(d)(2) and 68.110(b) of the rules, which reflect the requirement for notice of network changes that occur either on the network side of CPE or that affect the operation of equipment on the customer's premises. *See* Section 2 of *Modification of Final Judgment Governing the BOCs,* 552 F.Supp. 131, 227 (D.D.C. 1982). Consequently, we do not agree with AT&T's position that CSU changes, in response to network changes, cannot be implemented. We do not intend by our decisions herein to forestall network development or innovation by the carriers. CSU manufacturers and users will bear the risk of all necessary equipment modifications required in response to network changes announced pursuant to Sections 64.702(d) and 68.110(b). Widespread CSU modifications necessitated by network changed would be no less costly were AT&T to provide the CSU; the costs in equipment changes would be borne directly by the user in this case rather than indirectly through expanded revenue requirements and increased tariff charges. As a practical matter, we would expect that network changes initiated by the telephone company, once implemented, will prove beneficial to users, and the costs to users of revisions to their terminal equipment necessitated by those changes will be minimal in relation to the technical advantages offered thereby. Should future local loop technology require adjustment in our conclusions herein, appropriate regulatory remedies remain available.

32. In addition, AT&T raises what amounts to four basic technical-operational arguments suggested by AT&T that bear on its argument in favor of retention of the CSU as part of the DDS offering: (1) there is an array of tariffed offerings that requires the interposition of a telephone company-provided interface to provide the specified service: (2) there exist facility characteristics so variable from local loop to local loop as to warrant a telephone company-provided device at the termination of the offering in order to standardize the interface parameters; (3) the use of a customer-provided CSU would in some way cause operational harm to the network, or harm to other persons; and (4) remote loopback testing is a feature that must be available for network integrity. In the paragraphs that follow, we will examine each of these arguments.

33. *Signalling and standardization.* While AT&T asserts that a function of the CSU is to provide network termination standardization, there is no showing that DDS (or DS–1, for that matter) is offered at other than one set of predetermined amplitude levels, or that there are signalling options available. There are various data speeds offered which may necessitate equipment adjustment or network conditioning, but the digital offering is provided in a uniform format, with no signalling option or choice of amplitude level.[20] (As we discuss below, such equipment adjustment is generally handled automatically by the terminal equipment, or may be "set" by an

[19] AT&T's Tariff F.C.C. No. 267 guarantees 99.5% error-free seconds of operation at up to 56 kbps and provides for credit allowances for the periods the telephone company requires to complete repairs.

[20] Network conditioning refers to the technical characteristics and capabilities of the network facilities. Conditioning determines, in part, how efficiently terminal equipment will function when used with such facilities.

installer with the proper test equipment at the time of CSU installation.)

34. DDS signals normally consist of bipolar rectangular pulses. Because of the finite bandwidth of the DDS channel, distortion (primarily phase distortion) is introduced into the signal. Further, because the channel is not perfect, there is external noise pickup and self-generated thermal noise. To compensate, DDS trunks contain circuitry, including regenerators, that amplify, clip and resynchronize, or reconstruct the signals. These regenerators are spaced at regular intervals on a DDS line. The maximum span between the CSU and the previous regenerator is limited, so that the amount of noise and distortion at the CSU is generally not severe. The CSU alone does not perform all the requirements for coupling of the DDS line to the customer. In the receive (line to customer) direction, the CSU depends upon the fact that in traversing the local loop from the OCU at the central office to the CSU, line distortion and noise are within certain limits. This assures that the signal may be regenerated properly. In the transmit direction, the CSU depends on the customer to derive timing signals from the incoming signals and to provide signals in the proper format and synchronization to the line. If these conditions are not met, the CSU cannot accomplish its intended function. AT&T uses two types of CSU devices. At the lower DDS bit rates (2.4, 4.8, 9.6, and 56 kbps), a model 550A CSU is used. At the higher bit rate of 1.544 Mbps, a model 551A CSU is used. While both perform similar functions, the 551A is a more sophisticated device which performs certain signal monitoring and correction functions in addition to its 550A-like functions. These function include monitoring of the customer line and inserting pulses when necessary to achieve a specified minimum pulse density. In addition, an active clock recovery circuit allows pulses to be transmitted when no data signal is present. (This prevents oscillation along the span when customer data output ceases.) In addition, the telephone company must assure that the signal delivered to the interface contains no more than a specified level of distortion and noise. In this sense, DDS and other digital offerings do not require a "standardizing" interface, such as the CDQ used in private line tie-line services. *See First Report and Order* in Docket No. CC 79–143, 76 FCC 2d 246 (1980). So long as the arriving bits conform both to the terminator threshold voltage (V_{th}) specifications (0.35 V and 1.05 V for logic states 1 and 0, respectively) and to the waveform (distortion) limits of the CSU, no "standardization" is needed. *See* AT&T PUB 41021, *supra*.

35. *Loop variations.* As to the matter of variation in loop characteristics, it is apparent that at the lower DDS speeds, *i.e.*, below 1.544 Mbps, the CSU does not utilize regeneration circuitry, nor is there generally a requirement for regeneration equipment in the span between the central office and the customer premises. This certainly tends to show, at least in the lower speed DDS case, that local loops are conditioned adequately to deliver data to the CSU in a form that assures reliable, relatively error-free performance. At the higher DDS speed of 1.544 Mbps, final delivery of reasonably well-shaped waveforms is assured by the inclusion of regenerators in the loop, including a final regenerator within some 2000 feet of the customer's premises. *See* AT&T BSP 314–645–100; and AT&T Technical Reference PUB 41021, *supra*, Attachment E, Items 29–34. This final regenerator is located relatively close to the customer's equipment in order to prevent significant waveform distortion by extraneous noise sources in riser cables and "noisy" customer environments. While the CSU may require initial adjustment to optimize its compatibility with the local loop to which it is connected, there is no showing that noise or facility anomalies result in regular CSU readjustment or replacement. Indeed, the design of the CSU apparently permits its successful operation in most cases where properly conditioned facilities have been provided. The greater variable seems to be noise (and jitter) within a given loop rather than variation in characteristics from loop to loop, and these faults are generally easily handled by the CSU, whether provided by the telephone company or by an independent manufacturer. In conclusion, it is not evident that there generally exist facility variations justifying interposition of an exclusively telephone company-provided interface.

36. *Harm.* While the CSU is a signal reshaper which restores pulse quality, it has no way of determining if customer signals are properly synchronized or if the proper bipolar format is being generated. (The CSU for 1.544 Mbps service does recognize and correct certain faults, but it cannot compensate for all signal problems. Most faults in customer signals cannot be corrected and do not present the potential for harm to the network.) One possible source of harm might come from high amplitude pulses or voltages emanating from data equipment, creating levels that exceed the specifications of the network interface. But CSUs registered under Part 68 would include means of preventing such pulses or voltages from entering the network. In current designs, components in the reshaping or regeneration circuitry, *viz.*, transformers and varistors, provide that function. Other faults in customer generated signals would most likely cause harm only to the successful transfer of information. There is, then, negligible likelihood of "harm", as defined in Section 68.3(g) of the rules, to telephone service by direct connection of FCC-registered CSUs.

37. There is no suggestion by any party that the power drawn from the line for operation of CSU circuitry is likely to cause harm. We would expect that the standards we develop in this proceeding will include specifications that are analogous to the ringer equivalence number in our existing rules. Parties are invited to offer amendments to the proposals contained in the attached Appendix in this regard.

38. *Loopback testing.* A further argument offered by AT&T concerns its claim of its need to include remote loopback testing within the CSU as a feature of DDs. As discussed earlier, remote loopback testing provides the telephone company with the capability of locating or isolating faults in facilities (including span regenerators). Such capability, AT&T notes, is particularly useful in identifying the source of trouble on a line, which may be in the CSU. Were customer-provided CSUs that do not contain loopback testing capability interconnected, telephone companies could only test: (1) remotely to the regenerator closest to the network-customer demarcation point, or (2) by manual means to the demarcation point.[21] However, as indicated earlier herein, we believe it likely that independent CSU manufacturers will be eager to offer prospective purchasers of CSUs features that enhance system reliability and performance—such as remote loopback testing capability.

39. *Waiver.* As noted previously, we have carefully considered the specific arguments advanced with respect to the CSU and like digital devices and have concluded that, notwithstanding the carriers' arguments in favor of continued supply of such equipment on a regulated basis, there are advantages in favor of unregulated supply of such devices, *i.e.*, treating them no differently than other

[21] If the source of trouble cannot be isolated and the difficulty proves on a premises visit to stem from a defective CSU or other unit of station equipment, a "maintenance of service" charge as specified in the tariffs would apply.

terminal equipment. Technical and operational concerns have been raised; but, in our view, they are not insurmountable, and, in fact, represent relatively minor problems which can be addressed and solved. Nevertheless, in an abundance of caution we shall seek to create a mechanism by which carriers might, upon an appropriate showing, supply NCTE in conjunction with loop facilities if exigencies exist which have not been demonstrated to be applicable to the CSU devices. We address below the circumstances which, from our present perspective, might justify special treatment of NCTE, and we address the overriding principles which should apply if any such special treatment is sought.

40. While the CSU appears to interface with loop facilities using relatively stable interface parameters, to which other suppliers' CSU devices might similarly be designed on a stable basis, this may not be the case with all other NCTE equipment. We are aware that there may be variability among loops, and that in such circumstances supply of NCTE by the carrier in conjunction with the loop would create a stable interface to which competitive terminal equipment might be designed. This could occur where there is wide variability among loop characteristics, where the characteristics of each loop are unstable, or where facilities are changed frequently or are subject to extraordinary interference. In such cases, provision of NCTE by the carrier could promote competition among vendors of terminal equipment in that such equipment could be designed to interface with a standard interface specification, and the NCTE would provide the "customization" required to alter the loop characteristics to a form which would be compatible with that interface specification.[22] An additional function of such NCTE might be to maintain unchanged an interface characteristic when loop facilities are modified to embrace a new technology (*e.g.*, to digital facilities when analog facilities were used previously, or to optical fiber or broadband facilities when analog voice-grade pairs were used previously). This use of NCTE might minimize dislocations to subscribers who already have purchased and deployed terminal equipment and who might otherwise be faced with the prospect of modification to, or obsolescence of, their equipment if they wish to maintain uninterrupted service.[23]

41. We emphasize that our identification of these possibilities should not be construed as endorsement of the potential arguments by carriers that, where such circumstances are present, they should have the right to supply NCTE in conjunction with loop facilities. We shall address any such circumstances on an *ad hoc* basis, and carriers will have the burden of persuading us that our general policy in favor of unregulated supply of NCTE should be altered in specific circumstances. The result of this proceeding is to reject the notion that NCTE be supplied exclusively by carriers on a regulated basis — we foresee no possibility under which this principle might be varied.

42. *LADC.* IDCMA argues that AT&T's rulemaking petition to accomodate LADC service under Part 68 [24] similary requires that we accommodate DDS under Part 68. The argument seems to be that since both services utilize metallic loops to provide digital services they must be treated identically. While LADC and DDS facilities utilize metallic loops and may carry digital data, they are designed as different service offerings under the tariffs on file with this Commission and may not be treated identically. In any case, in view of our decision herein to view CSUs as CPE, the matter is moot.

43. *Other proceedings.* In *Second Notice, supra,* at Appendix A, the Commission proposed a general definition for the demarcation point between customer premises equipment and wiring, and the telephone network. The effective redefinition of the demarcation point for DDS, *i.e.*, to include the CSU as customer-provided equipment and require measurement of performance standards at that point, would have no impact upon our proposed general definition.

IV. Conclusion

44. Having reviewed and considered the arguments offered by AT&T in opposition to IDCMA's rulemaking petition and the comments of IBM, CCIA, and those filing informal comments, we find no technical, legal or policy justification for restricting independent manufacturers from providing CSUs or digital NCTE to digital service subscribers. We fail to be convinced that AT&T has met its burden of showing that independent provision of CSUs or digital NCTE would be publicly detrimental. Our experience with competition in terminal equipment under the current Part 68 program leads us to believe that reliance on the marketplace to produce CSU-like devices that function compatibly with DDS, including remote maintenance operations,[25] is not publicly detrimental and will be privately benefical. We find that there exist no reasons to further delay development of appropriate standards under Part 68 to permit registration and direct connection of terminal equipment to DDS (and other digital services, circuits and facilities utilizing digital NCTE or digital NCTE-like devices). Accordingly, we will offer for public comment IDCMA's technical proposals. *See* Appendix. We also ask that interested parties offer amendments to IDCMA's proposals to accommodate the higher speed digital service offerings, *e.g.*, DS–1, in the final rules.

45. In order to expedite the availability of alternatives to users and to implement our decision herein, we will require AT&T to file, within 30 days of publication of this notice in the **Federal Register**, appropriate tariff revisions to institute an interim plan. The tariff revisions should include an unbundling of all CSUs, CSU-like devices, and digital NCTE [26] so that any rates and charges associated with these devices, when provided by AT&T, are stated as separate rate elements. In addition, reasonable technical standards for direct interconnection of customer-provided CSUs, CSU-like devices and

[22] Of course, there is a correlative possibility that provisions of such NCTE by carriers in conjunction with loop facilities would have anti-competitive effects with respect to supply of the NCTE itself. We would consider this issue carefully in response to any waiver request.

[23] One of the arguments made by the carriers in favor of supply of the CSU in conjunction with DDS is that it implements automatic remote testing. As discussed, we conclude that others' equipment similarly can be used to implement a remote testing function. As a practical matter, this approach raises no problem with respect to DDS service, or other digital services similar to it which are used by sophisticated users of relatively complex data processing equipment. By our decision herein, we do not necessarily foreclose the possibility of at some point authorizing the supply by carriers of limited function, NCTE-like equipment, perhaps combined with a protector block, which inexpensively implements a remote testing function in conjunction with broadly available services, *e.g.*, MTS. Upon an appropriate showing, we are prepared to address the possibility that remote testing (and no more) might be implemented as part of the loop offering.

[24] RM–3528. *See* NPRM–NOI, supra at 885–87.

[25] One alternative to requiring compatible loopback testing would be to require a switch or other loopback test mechanism on the network side of the demarcation point that could be activated independently of the operation of the customer-provided CSU. This would enable the telephone company to test its facilities up to the demarcation point. However, such an approach effectively would interpose a new network CSU-like device unnecessarily duplicating the features more rationally required of the terminal CSU.

[26] As a practical matter, we anticipate that CSUs and digital NCTE will be incorporated as components in other digital equipment. When referring to CSUs or digital NCTE, we are referring to the CSU-like (or NCTE-like) component of such equipment.

digital NCTE to digital services and associated circuits and facilities [27] should be published in the tariffs or established by reference to specifications set forth in AT&T's PUB 41021, and other PUBs, supplemented as necessary. Such standards should include operational criteria for loop-back testing, and all necessary CSU, CSU-like, and digital NCTE technical specifications. We will require AT&T to submit these tariff revisions with a scheduled effective date of 30 days from their date of filing.

46. The use of a tariffed interim program is not without precedent. On March 17, 1983, the Commission allowed AT&T Tariff No. 270 (Transmittal No. 14186) to become effective. This tariff established a new service called High Capacity Circuits, which are dedicated private lines used for the transmission of digital signals at 1.544 Mbps, *i.e.*, DS-1. Initially, these circuits are to be provided via Terrestrial Digital Circuits (TDC), which are two-point, dedicated High Capacty Circuits used for simultaneous two-way transmission of serial, bipolar, return-to-zero isochronous digital signals at 1.544 Mbps, and are comprised entirely of terrestrial channels. In order to allow connections of customer-provided terminal equipment and systems to TDC, an interim program was established in Tariff No. 270. Under that program, which was also published in the Commission's Public Notices (No. 3260) on March 30, 1983, equipment and systems that were directly connected to a telephone company-provided 1.544 Mbps service, circuit or facility as of March 17, 1983, or meet the specifications of AT&T Technical Reference (PUB) 41451 and the report of the FCC/Industry Ad Hoc Task Group on Digital Interfaces,[28] may be included on the Commission's grandfather list of devices lawfully connectible to TDC. In the affidavit that must be filed with the Commission attesting to compliance with these specifications, a manufacturer must state that any equipment connected under the interim plan will be modified by the manufacturer (or his authorized agent) in response to revisions to Part 68 adopted in Docket No. CC 81-216 or RM-4087. Similarly, any manufacturer that provides digital CSU/NCTE devices pursuant to the standards that will be specified by AT&T in its digital CSU/NCTE interim program must be prepared to modify those devices in response to the standards ultimately adopted in RM-4087.

47. The effect of our decision herein is to apply the provisions of Section 64.702 of the rules to CSUs and digital NCTE. By so doing, CSUs and digital NCTE may be offered only on an unregulated basis.[29] This means that CSUs and digital NCTE offered subsequent to the effective date of AT&T's interim equipment program (described at para. 45, *supra*) will be treated as CPE and fully subject to market competition.

48. *The IDCMA rule proposals, RM-3530.* IDCMA offers a set of technical proposals that it believes are necessary to establish standards for the registration and interconnection of CSU-like devices to DDS. These proposals appear essentially as offered by IDCMA in the Appendix hereto, modified in part to reflect the broader application discussed at paras. 26 and 44 herein. We will briefly describe each of the proposals.

49. Revisions to Section 68.2(a) are proposed to allow appropriate terminal equipment to connect to digital services, circuits and facilities. A new grandfathering provision is also offered that would permit equipment of a type lawfully connected to such services, circuits or facilities prior to notice in the **Federal Register** of adoption of final rules in this proceeding to be connected for up to six months thereafter and to remain connected without registration. In view of the current absence of non-telephone company-provided CSUs and digital NCTE, we also will utilize the interim program described in para. 45, *supra*, (interim program No. 2) to establish grandfathering eligibility. Further, in order to prevent possible harm to the network from devices that digitize analog signals, we will require CSUs and digital NCTE connected under interim program No. 2 to also comply with the requirements of the interim program of March 30, 1983 described in para. 46 (interim program No. 1). Thus, the requirement for modification of devices connected pursuant to interim program No. 1 to comply with any rules adopted in response to RM-4087 remains applicable to all registered and grandfathered CSUs and digital NCTE. *See* proposed Section 68.2(f) in the Appendix hereto.

50. IDCMA proposes to modify Section 68.100 to allow appropriate terminal equipment to be connected to the digital access lines used to provide DDS. Our proposed amendments to Section 68.2, which encompass all digital services, circuits and facilities, would seem to make this modification unnecessary. IDCMA also proposes revising Sections 68.200 and 68.206 to make those sections consistent with Section 68.218(a) and to make it clear that compliance with certain inappropriate specifications not applicable to DDS is not required. Also, since ringer equivalence is a term that is not used in connection with regard to digital services, IDCMA proposes to amend the labelling requirement of Section 68.300. Finally, IDCMA offers revisions to Sections 68.308 and 68.310 to reflect the interference and longitudinal balance limitations necessary for DDS interconnection. We note that IDCMA's proposals do not reflect the high speed DDS offering, *i.e.*, 1.544 Mbps. In addition to offering comment on the rules in the Appendix, we ask interested parties to propose amended or additional rules necessary to implement registration and connection of CSUs and digital NCTE to DDS and other digital services, circuits and facilities.

51. *RM-4054.* AT&T proposes to add an alternative termination circuit to the current Part 68 loop and off-premises simulator circuits in order to permit a broader representation of actual network impedances during registration testing. AT&T suggests that hybrid balance circuitry tested in conjunction with this alternative test termination circuit will be reasonably assured of remaining within the bounds of the signal power limitations specified in Section 68.308 of the rules when connected to actual network loops. Comments were filed by GTE Service Corp. in support of AT&T's proposal. Interested parties are invited to comment on the proposed amendments to the definition of Loop Simulator Circuit and Off-Premises Line Simulator Circuit of Section 68.3, the proposed simulator circuit of Section 68.3(i), and the proposed note 3 to Figures 68.3(a) and (f). *See* Appendix.

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[27] Such tariff revisions should include provision for interconnection of NCTE with TDC (DS-1 rate signals) [*see* para. 46] and other digital services, circuits and facilities. Any future digital service, circuit or facility is equally subject to this requirement; where digital NCTE devices for such future service, circuit or facility requires special regulatory treatment, the waiver process discussed at para. 41, *supra*, remains available.

[28] In 1980, the Commission established an industry group to determine if revisions to Part 68 of the rules were necessary to allow connections of terminal equipment and systems to 1.544 Mbps digital channels. On December 1, 1981, the group reported that revisions were required and filed a report which identified those areas of Part 68 which should be revised. Subsequent to that report, AT&T filed a petition for rulemaking (RM-4087) requesting that part 68 be amended to allow connections of digital terminal equipment to 1.544 Mbps digital channels. That petition is pending. Copies of PUB 41451 and the group report, as well as AT&T's proposals in RM-4087, are available through the Commission's copy contractor.

[29] 84 FCC 2d 50, 61, n.10 (1980); 77 FCC 2d 384, 410-13 (1980).

52. *Part 68 or tariff procedures.* Upon receipt of comments on these proposed rule changes, and upon evaluation of the tariff filings implementing an interim program, we will be in a position to evaluate whether, and to what extent, rule changes are necessary. Registration has proven efficacious over the last eight years as a means of protecting the nationwide network from technical harm caused by the interconnection of customer-provided terminal equipment, but it has not been the exclusive procedure utilized. *See, e.g., Offer of Facilities to Other Common Carriers (Group/Supergroup)* in Docket No. 21499, FCC 83-39, (released February 15, 1983), and *Memorandum Opinion and Order (Plugs and Jacks)* in Docket Nos. 19528, 20774 and 21182, 70 FCC 2d 1800 (1979), for discussion of the use of the tariff mechanism in cases of relatively nonubiquitous, specialized interconnection offerings. With regard to our rulemaking proposals herein, we request comment on whether a tariff alternative should be employed here, rather than rules, and upon criteria which might be established to determine whether and under what conditions we should use rule or tariff procedures in future interconnection programs.

53. *Regulatory Flexibility Act Initial Analysis*

I. *Reason for Action.* The Commission is responding to a petition for rulemaking filed by IDCMA that seeks to expand the range of services currently encompassed under Part 68 of the Commission's rules. IDCMA proposes standards that would permit the direct connection of certain terminal devices to AT&T's DDS lines.

II. *The objective.* The Commission proposes to amend the scope of Part 68 of its rules to permit non-telephone company-provided CSU-like devices to be directly connected to DDS loops. The Commission also proposes to establish standards under Part 68 by which such devices may be registered.

III. *Legal basis.* Legal action as proposed is in furtherance of Sections 201-205 of the Communications Act of 1934, as amended, which require the provision of communications service offerings on a reasonable and not unreasonably discriminatory basis. *See* para. 55, *infra.*

IV. *Description, potential impact and number of small entities affected.* Development of rules to permit the registration and direct connection of CSU-like devices to DDS will follow the Commission's policy over the last seven years to open the provision of telephone network terminal equipment to competition. Such devices will be manufactured by an unspecified number of manufacturers who will benefit from the creation of a new market. No longer will Western Electric constitute the sole source of supply for the CSU. Price and feature innovation that has characterized the competitive marketplace for telephones, PBXs, and the like, will extend as well to CSUs. We see positive impact on small entities by our proposal to modify Part 68 of the rules.

V. *Recording, record keeping and other compliance requirements.* No significant additional paperwork will be required by the proposals set forth in this proceeding. New devices submitted for registration will constitute a negligible increase in the total number of devices currently being processed by the Commission.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternatives, minimizing impact on small entities and consistent with stated objectives.* The Commission's alternative is to restrict the competition in provision of CSU-like devices. For the reasons discussed herein, we believe such an alternative is inconsistent with the public interest and would unnecessarily restrict the development of healthy competition in the CSU marketplace.

V. Ex Parte Presentations

54. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing of substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a decision-making member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation which must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official(s) receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* Section 1.1231 of the Commission's rules, 47 CFR 1.1231. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

VI. Ordering Clauses

55. Accordingly, and in view of the foregoing, it is hereby ordered, pursuant to Sections 1, 4, 201-05 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-05, and 403, and 5 U.S.C. 553, that this docketed rulemaking proceeding is hereby expanded to consider further amendments to Part 68 of the Commission's Rules and Regulations, 47 CFR Part 68.

56. It is further ordered, pursuant to Sections 1, 4, 201-05, 215, 218, 220, 313, 309(e)-(h) and 412 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-05, 215, 218, 220, 313, 309(e)-(h) and 412, and 5 U.S.C. 553, that notice is hereby given of proposed rule changes in Part 68 of the Commission's Rules and Regulations, 47 CFR Part 68, in accordance with the discussion and delineation of issues herein.

57. It is further ordered that, pursuant to Sections 1, 4, 201-05 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-05 and 403, AT&T shall revise its interstate tariffs to provde an interim interconnection program for CSUs and digital NCTE devices, as described at paragraphs 45 and 46 herein.

58. It is further ordered that on the effective date of AT&T's interim program for the interconnection of CSUs, CSU-like devices, and NCTE to its digital services, circuits and facilities, such devices shall be considered CPE for purposes of Section 64.702 of the Commission's rules, 47 CFR 64.702.

59. It is further ordered that the Secretary shall cause a copy of this order to be published in the Federal Register.

60. Interested parties may file comments to the matters contained in the Appendix hereto on or before July 29, 1983, and relpy comments on or before August 17, 1983. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies

of all comments shall be furnished to the Commission. All submissions filed in this proceeding will be available for public inspection during regular business hours in the Commission's Docket Reference Room.

(Secs. 1, 2, 4, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602; 48 Stat. as amended; 1064, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 152, 154, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 68—[AMENDED]

It is proposed that Part 68 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations, Part 68) be amended as follows:

1. It is proposed to revise paragraphs (a) and add paragraph (f) to § 68.2 to read as follows:

§ 68.2 Scope.

(a) General. Except as provided for in paragraphs (b), (c), (d), (e), and (f), the rules and regulations in this part apply to the direct connection:

(1) Of all terminal equipment to the public switched telephone network, for use in conjunction with all services other than party line service and coin service.

(2) Of all terminal equipment to channels furnished in connection with foreign exchange lines (customer-premises end), the station end of off-premises stations associated with PBX and Centrex services, trunk-to-station tie lines (trunk end only), switched service network lines (CCSA and EPSCS), and digital services, circutis or facilities; and

(3) Of all PBX (or similar) systems to private line services for tie trunk type interfaces, off-premises station lines, automatic identified outward dialing, message registration, and digital services, circuits or facilities. Additional types of services may be added to this section only through rulemaking proceedings, and equipment connected to such added services will be afforded a reasonable transition period.

* * * * *

(f) Channel servicer units (and other network channel termination equipment) directly connected to digital services, circuits or facilities on [date of appearance of final rules in this proceeding in the **Federal Register**] will be grandfathered, and new equipment which is of the same type as grandfathered equipment may be directly connected to such digital services, circuits or facilities without registration for six months thereafter. Other such equipment must be registered prior to connection. All grandfathered and registered equipment so connected remains subject to modification by the manufacturer or an authorized agent thereof as necessary to comply with any analog conversion limitations specified in FCC tariffs or this Part.

2. It is proposed that in § 68.3 a note (3) be added to Figures 68.3(a) and 68.3(f); a new drawing entitled "Alternative Termination" (Figure 68.3(i)) be added; and paragraphs (j) and (q) be revised as follows:

§ 68.3 Definitions.

* * * * *

(3) Tests for compliance may be made with either R1=600 Ohms or R_1 replaced by the alternative termination shown in Figure 68.3(i).

* * * * *

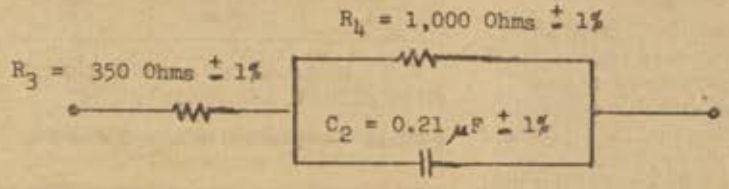

Figure 68.3(i)

Note: When this alternative termination is used during signal power compliance testing, it replaces R_1 (600 Ohms) in the loop simulator circuit.

(j) *Loop Simulator Circuit:* A circuit that simulates the network side of a 2-wire or 4-wire telephone connection during testing. A schematic of the type of circuit that will be required is shown in Figure 68.3(a) for 2-wire loop or ground start circuits, Figure 68.3(b) for 2-wire reverse battery circuits, Figure 68.3(c) for 4-wire loop or ground start circuits, and 68.3(d) for 4-wire reverse battery circuits. Figure 68.3(i) is an alternative termination for use in the 2-wire loop simulator circuits. Alternative implementations may be used provided that the same dc voltage and current characteristics and ac impedance characteristics will be presented to the equipment under test as are presented in the illustrative schematic diagrams. When used, the simulator circuit shall be operated over the entire range of loop resistance as specified in the Figures, and with the indicated polarities and voltage limits. Whenever loop current is changed, sufficient time shall be allocated for the current to reach a steady-state condition before continuing testing.

* * * * *

(q) *Off-Premises Line Simulator Circuit:* A load impedence for connection, in lieu of an off-premises station line, to PBX (or similar) telephone system loop start circuits, (Figure 68.3(f)) during testing. The schematic diagram of Figure 68.3(f) is illustrative of the type of circuit which will be requirted. Figure 68.3(i) is an alternative termination for use in the 2-wire loop simulator circuits. Other implementations may be used provided that the same dc voltage and current characteristics and ac impedance characteristics will be presented to the equipment under test as are presented in the illustrative schematic diagrams. When used, the simulator shall be operated over the entire range of loop resistances as indicated in Figure 68.3(f), and with the indicated polarities. Whenever loop current is changed, sufficient time shall be allocated for the current to reach a steady-state condition before continuing testing.

* * * * *

3. It is proposed to revise paragraph (d) of § 68.200 to read as follows:

§ 68.200 Application for equipment registration.

* * * * *

(d) A statement that the terminal equipment or protective circuitry complies with and will continue to comply with the appropriate rules and regulations in Subpart D of this part accompanied by such test results, description of test procedures, analyses, evaluations, quality control standards and quality assurance standards as are

necessary to demonstrate that such terminal equipment or protective circuitry complies with all the applicable rules and regulations in Subpart D of this part. The Office of Science and Technology may issue an OST Bulletin describing acceptable test methods; other test methods may be employed provided they are fully described in the application and are found acceptable by the Commission.

* * * * *

4. It is proposed that paragraph (a) of § 68.206 be revised to read as follows:

§ 68.206 Grant of application.

(a) The Commission will grant an application for equipment registration if it finds from an examination of such application and other matter which it may officially notice, that the equipment will comply with the applicable rules and regulations in Subpart D of this part, or that such grant will otherwise service the public interest.

* * * * *

5. It is proposed that a new paragraph (c) be added to existing § 68.300 as follows:

§ 68.300 Labelling requirements.

* * * * *

(c) Registered terminal equipment for connection to the digital services, circuits or facilities will not include a ringer equivalence number on the label. Instead, such equipment must state: "For use solely on digital interfaces."

6. It is proposed that a new paragraph (g) be added to § 68.308 as follows:

§ 68.308 Signal power limitations.

* * * * *

(g) *Interference Limitations for transmission of bipolar (non-return to 0) signals over digital services, circuits and facilities.* Prior to any frequency shaping filters, the system excitation is defined by an ideal 50 percent duty-cycle rectangular pulse. The relation of bit rate, R, in kbps and pulse amplitude, A, in Volts, is given in Table I. The power shall not exceed 0 dBm for 9.6 kbps or +6 dBm for 2.4 kbps, 4.87 kbps and 56.0 kbps. These are average power transfers with matched 135 Ohm driving and terminating resistances.

TABLE I.—DRIVING PULSE AMPLITUDE

Pulse rate (R) kbps	Amplitude (A) volts
2.4	3.32
4.8	3.32
9.6	1.66
56.0	3.32

1. The average power transfer is measured across a 135 Ohm terminating resistance with a matched 135 Ohm driving resistance.

2. The average power transfer will be measured using a random signal sequence (0 or +1 equiprobable in each pulse interval).

3. For all rates the driving pulse will be shaped by a single real pole low pass filter having a cutoff frequency in Hertz equal to 1.3×bit rate.

4. Specific band rejection filters are provided to protect certain other services. These requirements apply at 2.4, 4.8 and 9.6 kbps, and the amounts of additional rejection are specified in Table II.

TABLE II.—MINIMUM ADDITIONAL REJECTION

Rate (R) kbps	Rejection band	
	24 to 32 kHz	72 to 80 kHz
2.4	5 dB	1 dB
4.8	13 dB	9 dB
9.6	17 dB	8 dB

7. It is proposed that a new paragraph (1) be added to § 68.310 as follows:

§ 68.310 Longitudinal balance limitations.

* * * * *

(1) *Terminal equipment connected to digital services, circuits or facilities.* The metallic termination used for the performance of the test shall be 135 Ohms, the longitudinal termination may be kept at 500 Ohms, and all tests shall be made with the device in an active mode. For equipment operating in the frequency range of 200–1000 Hertz, the minimum balance requirement shall be 60 dB. For equipment operating in the frequency range of 1–15 kHz, the miminum balance requirement shall be 40 dB.

[FR Doc. 83-16326 Filed 6-23-83; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1102

[Ex Parte No. 290; Sub-2]

Railroad Cost Recovery Procedures; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the requirements of the Staggers Rail Act, the Commission proposes to adopt a modified version of the "all inclusive" index of railroad costs in accordance with the requirements of 49 U.S.C. 10707a. This index was proposed by the Association of American Railroads (AAR) and modified by the Commission after reviewing suggestions submitted by various parties. These rules are to augment those issued in our decision served April 17, 1981.

The Commission also proposes to change the notice period for rates increased under these provisions from one day to ten days and to require AAR to file its Index submissions on the first day of the last month of the quarter prior to the effective date. Requests for a separate proceeding dealing only with the notice issue are denied.

We continue to believe that, because the preponderance of the data underlying the computation of the index is proprietary, there can be no meaningful public review of or comment on it. Requests for public access to data underlying the index are denied.

The Commission continues to believe that the Staggers Rail Act mandated a single nationwide index and not separate regional indices. Requests for reopening this proceeding for the purpose of determining if the Commission has the authority to develop more than a single index are denied.

We also propose to adopt a modified version of AAR's proposal for handling wage additives and funds collected but not yet disbursed during periods of labor contract negotiations. Because the Commission has established Ex Parte No. 290 (Sub No. 4), *Railroad Cost Recovery Procedures-Productivity Adjustment*, all issues concerning productivity including the issue of discounting the index for a profit element will be handled in that proceeding.

DATE: Comments are due August 23, 1983.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275–7354

or

Robert C. Hasek (202) 275–0938.

SUPPLEMENTARY INFORMATION: Copies of the full decision are available, free of charge, from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423 (202) 275–7428.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. As to Pub. L. 96–354, although it is our opinion that it will not have a significant adverse impact on a substantial number of small entities, we also request comments on this issue.

List of Subjects in 49 CFR Part 1102

Administrative practice and procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: June 10, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-16655 Filed 6-23-83; 8:45 am]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Stabilization and Conservation Service

Proposed Determinations With Regard to the 1984 Feed Grain Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposed to make the following determinations with respect to the 1984 feed grain crops: (a) The loan and purchase levels; (b) the established (target) prices; (c) the national program acreages; (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an Acreage Reduction Program should be established and, if so, the percentage of such reduction and the method to be used in establishing the acreage bases; (f) whether a set-aside; program should be established and, if so, the percentage of such set-aside, (g) whether a Payment-In-Kind (PIK) Program should be established and, if so, the other PIK program provisions that should be applicable; (h) whether a land diversion program should be established and, if so, the extent of such diversion and the level of payment; (i) whether barley should be determined to be eligible for payment purposes; (j) whether malting barley should be exempt from an acreage reduction program if there is an acreage reduction program; (k) whether to permit haying and grazing of conservation use acreage if an acreage reduction, set-aside or Payment-In-Kind Program is established; (l) whether advance deficiency payments should be made and, if so, what percentage; (m) provisions of the farmer-owned reserve (FOR) program; (n) whether to require offsetting compliance if an Acreage Reduction Program is established; (o) whether popcorn and waxy corn should be included as field corn and eligible for program benefits; and (p) other provisions. These determination are to be made pursuant to the provisions of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act") and the Commodity Credit Corporation Charter Act.

EFFECTIVE DATE: Comments must be received on or before August 23, 1983 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agriculture Economist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4417. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance programs to which this notice applies are: Title-Feed Grain Production Stabilization: Number 10.055 and Title-Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Certain determinations set forth in this notice are required to be made by the Secretary for 1984-crop program purposes by November 15, 1983. In addition, it is necessary that the determinations for the 1984 crop be made in sufficient time to permit feed grain producers to make adequate plans for the production of their crop.

The following proposed program determinations with respect to the 1984-crop of feed grains are to be made by the Secretary:

Proposed Determinations

a. *The Loan and Purchase Level for the 1984 Crop of Feed Grains.* Section 105B(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1984 crop of corn at such level, not less than $2.55 per bushel, as the Secretary determines will encourage the exportation of feed grains and to result in excessive total stocks of feed grains after taking into consideration the cost of producing corn, supply and demand conditions, and world prices for corn. Section 105B(a)(2) provides that the Secretary shall make available to producers loans and purchases for the 1983 crops of grain sorghum, barley, oats, and rye at such levels as the Secretary determines are fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and certain other factors specified in Section 401(b) of the 1949 Act. If the Secretary determines that the average price of corn received by producers in any marketing year is not more than 105 percent of the level of loans and purchases for corn for such marketing year, the Secretary may reduce the level of loans and purchases for the next marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain, except that the level of loans and purchases shall not be reduced by more than 10 percent in any year nor below $2.00 per bushel. Loan and purchase levels per bushel being considered for the 1984 feed grain crops range from $2.40 to $2.55 for corn; $2.28 to $2.42 for grain sorghum; $1.95 to $2.08 for barley; $1.23 to $1.31 for oats; and $2.04 to $2.17 for rye.

Comments on the level of loans and purchase rates for the 1984 crop of feed grains, along with supporting data, are requested from interested persons.

b. *The Established (Target) Price Level for the 1984 Crop of Feed Grains.* Section 105B(b)(1)(C) of the 1949 Act provides that the established price for corn shall not be less than $3.03 per bushel for the 1984 crop. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect

any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable cost, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

In addition, the Department of Agriculture has proposed that Section 105B(b)(1)(C) of the 1949 Act be amended to provide that the minimum level for the established price for corn will not be less than $2.86 per bushel for the 1984 crop of corn rather than the current statutory minimum of $3.03 per bushel. This amendment to the 1949 Act has been proposed because of the low rate of inflation for the past year. The established (target) price level under consideration for the 1984 corn crop is the minimum statutory level—whether that level is $3.03 per bushel or a lower statutory minimum level, such as $2.86 per bushel. Section 105B(b)(1)(E) of the 1949 Act provides that the payment rate for grain sorghum, oats, and, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn.

Comments are requested from interested persons as to the amount of the established (target) price for the 1984 crops of feed grains along with supporting data.

c. *The National Program Acreages (NPA's).* Section 105B(c)(1) of the 1949 Act provides that the Secretay shall proclaim NPA's for the 1984 crop of feed grains not later than November 15, 1983. The NPA's for feed grains shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the 1984 crops) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for exports during the 1984/85 marketing year. If the Secretary determines that carryover stocks of feed grains are excessive or an increase in stocks in needed to assure desirable carryover, the Secretary may adjust the NPA's by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA's first proclaimed if the Secretary determines it is necessary based upon the latest information. If an acreage reduction program is implemented for the 1984 crop of feed grains, the NPA's shall not be applicable to such crop.

The U.S. feed grain stock objective, an amount judged to be our "fair" share of world coarse grain stocks, has been determined to be equal to approximately 6.25 percent of the world consumption of coarse grains (this represents the approximate 18-year average of the ratio of U.S. stocks to world consumption) or approximately 48 million metric tons for the 1983/84 marketing year.

If required, the likely NPA's for the 1984 crops of corn, sorghum, barley, and oats would be:

	Corn	Sorghum	Barley	Oats
a. Estimated domestic use, 1984–85	5,450	471	452	530
b. Plus estimated silage use, 1984–85	635	50		
c. Plus estimated exports, 1984–85	2,200	260	65	10
d. Minus estimated imports, 1984–85	1		10	1
e. Plus or minus stock adjustment[1]	−690	−261	−60	+50
f. Divided by national weighted average farm program payment yield (bushels per acres)	110.0	60.0	52.0	55.0
g. Equals 1984-crop NPA's (million acres)	69.0	8.7	8.6	10.7

[In million of bushels]

[1]a. Estimated 1985–85 beginning stocks	2,115	441	240	185
b. Minus about 6.25 percent of 1983–84 world consumption of coarse grains.	1,425	180	180	235
c. Equals desired stock adjustment	−690	−261	−60	+50

No NPA's were announced for the 1983 crop of feed grains because the NPA provisions do not apply when an acreage reduction program is in effect. Comments on the NPA's and the appropriate stocks level for the 1984 crop of feed grains from interested persons, along with appropriate supporting data, are requested.

d. *Whether a Voluntary Reduction Percentage Should be Proclaimed and, if so, the Level of Such Voluntary Reduction Percentage.* Section 105B(c)(3) of the 1949 Act provides that the 1984 individual farm program acreage of feed grains eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer reduces the acreage of feed grains planted for harvest on the farm from the 1984-crop established feed grain acreage base by at least the percentage recommended by the Secretary in the proclamation of the NPA's for the 1984 crop. If an acreage reduction program is implemented for the 1984 crop of feed grains, the voluntary reduction percentage shall not be applicable to such crop.

If required, the recommended national reduction percentage for the 1984-crop of feed grains would be:

[In millions of acres]

	Corn	Sorghum	Barley	Oats
a. 1984 estimated acreage base [1]	83.5	17.8	10.3	10.4
b. Minus 1984 preliminary NPA	69.0	8.7	8.6	10.7
c. Equals acreage reduction needed from acreage base	14.5	9.1	1.7	−0.3
d. Divided by 1984 acreage base	83.5	17.8	10.3	10.4
e. Equals 1984-crop recommended reduction percentage	17.4	51.1	16.5	0

[1] Equals the 1983 base acreage.

Comments from interested persons with respect to the reduction percentage, if any, are requested.

e. *Whether an Acreage Reduction Program (ARP) Should be Established and, if so the Percentage of Such Reduction and the Method of Establishing Acreage Bases.* Sections 105B(e) (1) and (2) of the 1949 Act provides that the Secretary may establish an acreage reduction program for the 1984 crop of feed grains if the Secretary determines that the total supply of feed grains, in the absence of such a program, will be excessive, taking into account the need for an

adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary is required to announce whether an acreage reduction program is to be in effect for the 1984 crops of corn, sorghum, oats and, if designated, barley by not later than November 15 prior to the calendar year in which the crop is harvested. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each feed grain-producing farm. Producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for feed grain loans, purchases, and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to feed grains for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to feed grains for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. In addition, a number of acres on the farm determined by dividing (1) the product obtained by mutiplying the number of acres required to be withdrawn from the production of feed grains times the number of acres actually planted to feed grains by (2) the number of acres authorized to be planted to feed grains under a limitation established by the Secretary, shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

The need for an acreage reduction program for feed grains in 1984 will depend on the outcome of the 1983 feed grain crop. It is estimated that the 1983-crop plantings of feed grains may be reduced by 15 to 20 percent from the previous year and 1983 corn planted acreage could be reduced by about 30 percent. Total feed grain production is projected to be down approximately 25 percent from the record 1982 feed grain crop.

Domestic feed grain use for 1983/84 will be approximately 163 million metric tons, about the same as for 1982/83. U.S. feed grain exports are likely to recover partially from the sharp decline experienced during 1981/82 and 1982/83. Projected exports of 61 million tons, up 10 percent from 1982/83, would still be 10 million tons below record feed grain exports during 1979/80. U.S. exports for 1983/84 may vary considerably depending on world wheat and feed grain production.

Total feed grain use for 1983/84 will be approximately 224 million tons, 6 million tons greater than 1982/83 use. However, the large projected reduction in production could reduce carryover stocks to about 73 million tons, down sharply from the estimated carryover of 108 million tons. Ending stocks of this magnitude would still be considered excessive. The farmer-owned reserve will continue to play an important role in isolating excessive supplies from the market, while the amount of grain in government inventory will be reduced because of the Payment-In-Kind (PIK) Program. The stock-to-use ratio of 33 percent compares with the 41 percent average of the previous 2 years, and 21 percent average during the last 10 years.

Unless economic conditions and demand factors improve materially and/or crop conditions deterioriate significantly during the 1983/84 season, the 1984/85 outlook is one of increasing supplies and continued pressure on prices. Given the 1983/84 outlook, ending carryover stocks of corn may decrease to about 2.1 billion bushels and total feed grains to 73 million metric tons. These amounts are considered to be excessive.

With a program for the 1984 crop providing for a 10 percent ARP combined with a 10 percent to 30 percent PIK, the harvested acreage for the 1984 crops of feed grains are estimated to increase about 20 percent from the 1983 level. Considering trend yield estimates, production for the 1984 crop of feed grains is estimated to increase about 20 percent over the 1983 crop. With this level of production and estimated beginning stocks of about 73 million metric tons, the total supply of feed grains for 1984/85 is projected at about 300 million tons, or approximately the same supply during 1983/84. Domestic use in 1984/85 is projected to increase about 3 to 4 percent. This level of use should result in feed grain ending stocks of about 70 million tons or a slight decrease from the 1983/84 carryover.

The above outlook suggests the implementation of an acreage reduction program in conjunction with either a paid land diversion or a PIK program for the 1984 feed grain crop. However, later crop developments throughout the world could materially change this outlook. Options under consideration at this time include: (1) A 10 percent ARP with a 10 to 30 percent PIK program, including whole based bids; (2) a 10 percent ARP, a 10 to 30 percent PIK program, with whole based bids, and target prices remaining at the 1983 levels; (3) a 10 percent ARP, a 10 to 30 percent PIK with whole based bids, and reduced loan and purchase rates; (4) a 10 percent ARP with a 10 to 30 percent paid land diversion program; (5) a 15 percent ARP; and (6) a 10 percent ARP and a 10 to 30 percent PIK, without whole based bids.

Interested persons are encouraged to comment on the need for an acreage reduction program for the 1984-crop of feed grains, and the appropriate percentage of any such reduction. Comments are also requested on whether feed grain bases should continue to be established by combining the corn/sorghum and barley/oats bases, or whether there should be a separate base for each commodity. In addition, comments are requested as to whether producers who desire to participate in the feed grain program should be required to execute binding contracts at the time of enrollment in the program. Presently, a producer desiring to participate in the program signs an intention to participate and later provides a certification with respect to the applicable acreage in order to receive program benefits. If, at the time of program enrollment, a producer was required to execute a formal contract, it would help prevent large dropouts of the announced programs—such as occurred with regard to the 1982 corn program when about two of every three enrollees dropped out.

f. *Whether a Set-Aside Program Should be Established and, if so, what Percentage of Such Set-Aside.* Sections 105B(e) (1) and (3) of the 1949 Act provide that the Secretary may establish a set-aside program for the 1984 crop of feed grains if the Secretary determines that the total supply of feed grains, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such feed grain set-aside program not later than November 15 of the year prior to the calendar year in which the crop is harvested. If a set-aside program is announced, the producers on a farm must, as a condition of eligibility for loans, purchases, and payments, set-aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the acreage of feed grains planted for harvest of the crop for which

the set-aside is in effect. The set-aside acreage shall be devoted to conservation uses in accordance with regulations issued by the Secretary. If a set-aside program is established, the Secretary may limit the acreage planted to feed grains. Such limitation shall be applied on a uniform basis to all feed grain-producing farms. The Secretary may make such adjustments in individual set-aside acreages as the Secretary determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, topography, and such other factors as the Secretary deems necessary.

Interested persons are encouraged to comment on the need for a 1984 Feed Grain Set-Aside program and, if so, the appropriate percentage of acreage to be reduced.

g. *Whether a Payment-In-Kind Program Should be Authorized and, if so, what Other Related Program Provisions Should be Applicable.* Section 105B(e)(5) of the 1949 Act authorizes the Secretary to make land diversion payments to producers of feed grains if the Secretary determines that the payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) gives the Corporation broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets and remove and dispose of agricultural surpluses.

Although acreage reduction and land diversion programs announced for the 1983 crop of feed grains required a producer to reduce the farm acreage base by 20 percent, the supply of feed grains still greatly exceeded demand, thus creating an undesirable surplus. Accordingly, the Department determined that the diversion of additional acreage from the production of 1983-crop corn and sorghum was necessary and that participating producers would receive payment-in-kind compensation. This acreage which was diverted under the Payment-In-Kind Program was in addition to that acreage which the producer agreed to take out of production in accordance with the previously announced acreage reduction and cash land diversion programs for the 1983 corn and sorghum crops. Barley and Oats were not included in the 1983 Payment-In-Kind Program since the stocks of these commodities, although excessive, were not as severely out of line with historical levels.

With respect to the 1983 Payment-In-Kind Program for corn and sorghum, a producer could enter into a contract with the Commodity Credit Corporation (CCC) to divert not less than 10 percent nor more than 30 percent of the corn/sorghum acreage base established for the farm. In addition, producers could submit whole base bids for a contract to divert 100 percent of the farm acreage base. The bids which were submitted were based upon the percentage of the farm's corn or sorghum yield which the producer was willing to accept as payment-in-kind compensation. The number of whole base bids which were accepted for the 1983 corn/sorghum crop in each county was limited so that the total corn/sorghum acreage taken out of production under the payment-in-kind, acreage reduction, and land diversion program would not exceed 45 percent of the combined corn/sorghum acreage bases in that county.

With respect to contracts which were entered into by producers under the Payment-In-Kind Program for the diversion of between 10 and 30 percent of the corn/sorghum acreage base established for the farm, the quantity of corn/sorghum which the producer was eligible to receive as payment-in-kind compensation was equal to the acreage which was diverted multiplied by the farm's program yield multiplied by 80 percent. With regard to contracts which were entered into by producers under the program involving whole base bids, the quantity of corn/sorghum received as payment-in-kind compensation was determined in the same manner as the 10–30 percent contracts, except that the bid percentage was substituted for the 80 percent factor.

If the producer elected to participate in the Payment-In-Kind Program for corn/sorghum and the producer had an outstanding quantity of corn/sorghum pledged as collateral for a farmer-owned reserve loan which was obtained before January 12, 1983, or for a regular price support loan, the producer was required to redeem a quantity of such loan collateral equal to that quantity of corn/sorghum which the producer was entitled to receive as payment-in-kind. The producer would then sell that quantity of grain which has been redeemed to CCC for payment-in-kind purposes. In the case of farmer-owned reserve loans, the price at which CCC purchased the corn/sorghum from the producer was reduced by the amount of any unearned advance storage payments. Further, in the case of farm stored farmer-owned reserve loans, the purchase price included additional compensation to take account of long-term, storage-related commitments the producers may have undertaken. The quantity or corn/sorghum purchased by CCC in this manner would be made available to the producer as payment-in-kind. To the extent that a producer has no price support loan collateral which could be made available to CCC for payment-in-kind purposes, the producer would receive payment-in-kind compensation from warehouses designated by CCC.

A payment-in-kind program for the 1984 crop of feed grains will be considered. Any such program would be in addition to an ARP. The percentages of the farm program payment yield which would be made available as payment-in-kind under such a program would range from 50 percent to 80 percent.

Interested parties are invited to comment on the need for a PIK Program in 1984, and on the various program provisions required to administer such a program. Comment should include supporting data.

h. *Whether a Cash Land Diversion Program Should be Established and, if so, the Extent of Such Diversion and the Level of Payments.* Section 105B(e)(5) of the 1949 Act provides that the Secretary may make land diversion payments to producers of feed grains, whether or not an acreage reduction or set-side program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. The amount payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary deems appropriate. In the past, land diversion payments have been made based upon an offer rate system (i.e., a specific rate per bushel multiplied by the farm program payment yield).

Interested persons are encouraged to address the need for a cash land diversion program either in lieu of, or in conjunction with, an acreage reduction or set-aside program and the appropriate terms and conditions of a land diversion program.

i. *Whether Barley Should be Determined to be an Eligible Commodity for Payment Purposes Under the Feed Grain Program.* Section 105B(b)(1)(E) of the 1949 Act gives the Secretary discretionary authority concerning the inclusion of barley as a commodity which is eligible for payments under the feed grain program.

In the past, barley has been included as a commodity for which payments can be made under the feed grain program with the exception of the 1967, 1968 and 1971 programs. If barley were not included in the 1984 program, barley producers would not be eligible to receive payments under the feed grain program for their crops but would be eligible for the price support and farmer-owned grain reserve programs.

While barley acreage has been reduced slightly over the past few years, yield trend increases have maintained barley supplies around 600 million bushels with normal weather conditions. The 1982 crop was a record 522 million bushels with a record yield of 57.3 bushels per acre. Barley demand, however, has remained fairly stable. Carryover stocks for barley during the 1983/84 crop year is projected to total 240 million bushels which is considered more than adequate.

Interested persons are encouraged to comment on barley being included as a commodity for which payments can be made under the 1984 Feed Grain Program, considering the supply and demand situation indicated above.

j. *Whether Malting Barley Should be Exempt from an Acreage Reduction Program if there is Such a Program.* Under Section 105B(e)(2) of the 1949 Act, the Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for feed grain loans, purchases, and payments to comply with any acreage limitation if such producer has previously produced a malting variety of barley, plants barley only of an acceptable malting variety for harvest, and meets other conditions as the Secretary may prescribe.

Comments from interested persons with respect to the malting barley exemption, if any, are requested.

k. *Whether to Allow Haying and Grazing of Conservation Use Acreage if an Acreage Reduction Program, Set-Aside Program, or Payment-In-Kind Program is Established.* Section 105B(e)(4) of the 1949 Act provides that the regulations issued by the Secretary with respect to acrease required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

With respect to the 1983-Crop Feed Grain Acreage Reduction Program, producers were permitted to graze the conservation use acreage except during the six principal growing months but were not permitted to harvest their conservation use acreage for hay.

If an Acreage Reduction, Set-Aside or Payment-In-Kind Program is announced for the 1984 crop of feed grains, the only option under consideration would permit grazing of the conservation use acreage, except during the six principal growing months.

Interested persons are invited to comment on the provisions concerning the grazing and haying of conservation use acreage.

1. *Advance Deficiency Payments.* Section 105C of the 1949 Act provides that if the Secretary establishes an acreage reduction or acreage set-aside program for feed grains and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program. Payments are to be made available to producers in such amounts as the Secretary determines appropriate to encourage adequate participation in the 1984 feed grains program, except that the payments shall not exceed an amount determined by multiplying (i) the estimated farm program acreage, by (ii) the farm program yield, by (iii) 50 percent of the projected payment rate, as determined by the Secretary.

In any case in which the deficiency payment which is to be made to a producer for a crop, as finally determined by the Secretary, is less than the advance deficiency amount paid to the producer, the producer shall refund the difference.

If no deficiency payments are to be made to producers, the producers who received advance payments shall refund such advance payments. Any refund shall be due at the end of the marketing year.

If a producer fails to comply with the requirements under the acreage reduction or set-aside program involved after obtaining any available advance deficiency payment, the producer shall repay immediately the amount of the advance plus interest thereon as determined by the Secretary.

For the 1984 feed grain program, the option under consideration is to make available to producers advance deficiency payments at 50 percent of the projected payment rate. Interested persons are requested to comment with respect to the need for, and the amount of, advance deficiency payments.

m. *Provisions of the Farmer-Owned Reserve (FOR).* Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program under which producers of feed grains will be able to store such feed grains when it is in abundant supply and extend the time for its orderly marketing. The Secretary shall provide for original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of price support provided for under the feed grain program established in accordance with Section 105B of the 1949 Act. The program may provide for: (1) Repayment of such loans in not less than three years nor more than five years; (2) payments to producers for storage in such amounts and under such conditions as are determined to be appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for feed grains has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the feed grains securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained a specified level (i.e., the "trigger release level"), as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of feed grains to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of feed grains. The Secretary may place an upper limit on the amount of feed grains placed in the reserve but such upper limit may not be less than 1 billion bushels of feed grains.

The following options are under consideration with respect to the FOR for the 1984-crop of feed grains: (a) Providing for an extended price support loan with a loan rate which is equal to the loan rate which is applicable to regular price support loans for the 1984 crop of feed grains; (b) providing for a storage payment rate of 26.5 cents per bushel for all crops except oats, which would be 20 cents per bushel; (c) charging producers who have pledged feed grains as collateral for a loan under the FOR interest for the first year at the prevailing rate the United States Treasury charges CCC for its borrowings and waiving interest for the second and third years; (d) providing for a corn trigger release level of $3.25 per bushel or a trigger release level at the same level as the target price level for

corn (sorghum, barley and oats trigger release levels would approximate their feed value relationship to corn); (e) providing that a producer may not place feed grain into the FOR until after maturity of the 9-month regular price support loan; and (f) placing no upper limit on the quantity of feed grains entering the reserve program.

Interested persons are encouraged to comment on these or other options dealing with the provisions of the farmer-owned reserve program for the 1984 crop of feed grains.

n. *Whether to require Offsetting Compliance if an Acreage Reduction Program is established.* Section 105B(g) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the feed grain program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or the acreages of feed grains planted to harvest on each of such farms did not exceed the feed grain acreage bases which were established for such farm.

Offsetting compliance was not in effect for the 1983 crop. Interested persons are encouraged to comment on the need for offsetting compliance for the 1984-crop of feed grains if an acreage reduction program is established.

o. *Whether Popcorn and Waxy Corn Should be Determined to be an Eligible Commondity for Payment Purposes Under the Feed Grain Program.* Section 105B of the 1949 Act gives the Secretary discretionary authority concerning the inclusion of popcorn as a commodity which is eligible for benefits under the feed grain program. In the past, popcorn has not been considered to be "corn" which would be eligible for these benefits. If popcorn were included in the 1984 program, popcorn producers would become eligible to receive payments under the feed grain program and also become eligible for the price support and farmer-owned grain reserve program.

Historically, popcorn and certain other corn varieties have not been considered corn for the purposes of the feed grain program authorized by the 1949 Act. The acreage devoted to these excluded varieties is not used in determining acreage bases under the authorized feed grain program. Consequently, this acreage has not been eligible for program benefits nor is the acreage of such varieties charged against the acreage of corn which is permitted to be grown by a producer under the current acreage reduction, paid land diversion, or Payment-In-Kind Programs. If popcorn were to be inlcuded, a record of 1980–1983 popcorn planted acreage would have to be secured—and this acreage would be added to the farm's established corn/sorghum base acreage.

Most popcorn acreages are grown under contract and the production enters the commercial food trade channels. Therefore, popcorn statistics are limited, which impedes an in-depth analysis of the production and CCC budget impacts of including it in the feed grain program. In addition, grade standards would have to be established in order to offer a loan and reserve program for popcorn.

The Department also requests comments on whether waxy corn should be included in the 1984 Feed Grain Program. Waxy corn has historically been included in the feed grain program and eligible for program benefits. However, some growers of waxy corn have requested that this corn be excluded from the feed grain program since the principal use of this corn is as a food grain.

Interested persons are encouraged to comment on the inclusion or exclusin of these crops or other varieties from the 1984 feed grain program, along with appropriate supporting data.

p. *Other Related Provisions.* A number of other determinations must be made in carrying out the feed grain loan and purchase programs such as: (a) Commodity eligibility; (b) premiums and discounts for grades, classes, and other qualities; (c) establishment of county loan and purchases rates; (d) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to the above item.

Signed at Washington, D.C. on June 20, 1983

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 83-17013 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Nezperce National Grazing Advisory Board; Meeting

The Nezperce National Forest Grazing Advisory Board will meet at 6:00 p.m., August 8, 1983, at Adams Work Center located at the head of Mill Creek, Section 26, T27N, R3E, B.M. There will be a barbecue steak fry and evening meeting with the board at Adams. The meeting will continue on August 9 with a horseback ride to Sawyer Ridge on the Butte Gospel Grazing Allotment and to American Creek on the Hungry Ridge Allotment.

The purpose of the meeting will be to review allotment management plans and range improvements.

Public participation is welcome; however, participants will be responsible for their own transportation, horse and bedroll.

Dated: June 15, 1983.

Tom Kovalicky,

Forest Supervisor.

[FR Doc. 83-17047 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Colorado-Ute Electric Association, Inc.; Supplemental Draft Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Availability of supplemental draft environmental impact statement and notice of public hearings.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Supplemental Draft Environmental Impact Statement (SDEIS) and intends to hold public meetings in connection with the proposed construction of approximately 440 km (275 miles) of single circuit 345 kV transmission line and associated facilities by Colorado-Ute Electric Association, Inc., (Colorado-Ute), Western Area Power Administration (Western) and Public Service Company of Colorado. The proposed transmission line would extend from Colorado-Ute's Rifle Substation near Rifle, Colorado, to the San Juan Generating Station located near Farmington, New Mexico. Associated facilities include the expansion of existing substations at Grand Junction, Montrose, and Durango, Colorado; construction of a new substation (Long Hollow) near Durango, Colorado; addition of termination facilities at the Rifle Substation and the San Juan Generating Station Switchyard; and the construction of approximately 11 km (7 miles) of 115 kV transmission line from the proposed Long Hollow Substation to the existing Durango Substation. REA has been

asked to provide financing assistance for the proposed construction.

DATE: Public comments must be received by REA no later than August 8, 1983.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Western Area—Electric, Rural Electrification Administration, Room 3304–S, U.S. Department of Agriculture, 14th and Independence Ave., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Mr. William E. Davis, Director, Western Area—Electric, above address, telephone: (202) 382–8848 or FTS 382–8848.

SUPPLEMENTARY INFORMATION: In response to the request for financing assistance from Colorado-Ute, REA and the cooperating agencies (Western, the U.S. Forest Service and Bureau of Land Management) prepared the SDEIS for the proposed construction of approximately 440 km (275 miles) of 345 kV transmission line and associated facilities. The proposed construction would affect portions of Garfield, Mesa, Delta, Montrose, Ouray, San Miguel, Dolores, Montezuma and La Plata Counties, Colorado, and San Juan County, New Mexico.

The SDEIS may be examined during regular business hours at the following locations:

Rural Electrification Administration 14th and Independence Ave., SW., Room 3304–S, Washington, D.C. 20250.
Colorado-Ute Electric Association, Inc., 1845 South Townsend Avenue, Montrose, Colorado 81401.
Western Area Power Administration, 1627 Cole Boulevard, Denver, Colorado 80401.

The SDEIS may also be examined at the Forest Supervisor's offices located in Glenwood Springs, Delta and Durango, Colorado; Bureau of Land Management District Offices in Montrose, Grand Junction, Glenwood Springs and Durango, Colorado, and Farmington, New Mexico; and also at public libraries in the affected counties.

Alternatives considered in the SDEIS include no action, energy conservation and load management, purchase of required power, noncentralized generation sources, upgrading/rebuilding existing transmission facilities, installation of series compensation, system alternatives, alternative corridors, alternative substation sites and alternative structure designs.

The preferred alternative, which is the construction of a single circuit 345 kV transmission line, would not affect threatened and endangered species or known cultural resources. The proposed project would remove a small amount of agricultural land (approximately 1.6 ha (4 acres) from production. Approximately 320 ha (790 acres) of commercial timberland would be lost for the life of the project. The project would cross some floodplain areas associated with the Colorado River. REA has tentatively concluded that there is no practicable alternative to crossing these areas. Further information concerning this matter can be found in the SDEIS.

Copies of the SDEIS have been sent to various Federal, State and local agencies and individuals which have already expressed an interest in this proposal, as outlined in the Council on Environmental Quality Guidelines (40 CFR Part 1500). Limited copies are available upon request to Mr. William E. Davis, Director, Western Area—Electric, address above.

REA and the cooperating agencies will hold public hearings to obtain comments on the SDEIS and environmental aspects of the proposed project. The hearings will be held at the following locations:

July 25, 1983, 7:30 p.m., Ramada Convention Center, Bookcliffs Room, 718 Horizon Drive, Grand Junction, Colorado.

July 26, 1983, 7:30 p.m., Colorado-Ute Electric Association Auditorium, 1845 South Townsend Street, Montrose, Colorado.

July 27, 1983, 7:30 p.m., Durango Senior High School Auditorium, 2400 Main Avenue, Durango, Colorado.

July 28, 1983, 7:30 p.m., Empire Electric Association, Calvin Denton Room, 801 M. Broadway, Cortez, Colorado.

Final REA action concerning the project, including any release of funds for construction, will be taken only after REA has reached satisfactory conclusions with respect to the project's environmental effects and compliance with the National Environmental Policy Act of 1969 and with other environmentally related statutes, regulations, Executive Orders, and Secretary's Memoranda.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: June 16, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-16786 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Creswell Watershed, North Carolina; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Creswell Watershed, Washington, County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, P.O. Box 27307, Raleigh, North Carolina, 27611, telephone 919–755–4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include 1,850 feet of dike, four-48" tide gates, three pumps with combined capacity of 25,000 gpm.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Coy A Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 13, 1983.

Coy A. Garrett,

State Conservationist.

[FR Doc. 83-16676 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-16-M

Town of Shirley Flood Prevention RC&D Measure, Indiana; Environmental Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, Crawfordsville Road, Indianapolis, Indiana 46224, telephone (317) 248-4350.

Notice

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Shirley Flood Prevention RC&D Measure, Hancock County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Robert Eddleman, State Conservationist has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for flood prevention for the Town of Shirley. The planned works of improvement include the construction of 550 feet of diversion, 1050 feet of drainage field ditch, 2250 feet of underground outlet, 0.9 acres of critical area planting, and one inlet for surface water control.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various federal, state and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 13, 1983.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 83-16675 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-16-M

Cedar Bend Critical Area Treatment RC&D Measure, Indiana; Environmental Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana, 46224, telephone 317/248-4350.

Notice

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cedar Bend Critical Area Treatment RC&D Measure, Boone County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these Findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan of critical area treatment. The planned works of improvement include construction of thirteen (13) water and sediment control basins with 2400 feet of subsurface drain as an outlet. Also, approximately 3.5 acres of seeding, fertilizing and mulching will be done after construction is completed.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 15, 1983.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 83-16853 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-16-M

Cedar-Piney Creeks Watershed, Arkansas; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cedar-Piney Creeks Watershed, Yell County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservationist Service, P.O. Box 2323, Little Rock, Arkansas 72203, telephone 501-378-5288.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention, municipal water and watershed protection. A portion of the project, including 87 percent of the land treatment and one multiple purpose structure for flood prevention and municipal water, has been completed. National Environmental Policy Act

requirements for these completed measures have been fulfilled. The planned works of improvement remaining to be installed include two single purpose floodwater retarding structures and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack C. Davis, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 17, 1983.

Jack C. Davis,

State Conservationist, Soil Conservation Service, Arkansas.

[FR Doc. 83-16850 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-16-M

Muddy Fork of Silver Creek Watershed, Indiana; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Muddy Fork of Silver Creek Watershed, Clark County, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana, 46224, telephone 317 248-4350.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, recreation, and municipal water supply. Alternatives under consideration to reach these objectives include systems for conservation land treatment, nonstructural measures, earth dams, and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 7:30 p.m., (EDT) Wednesday, August 10, 1983, in the Borden Museum, New Providence (Borden), Indiana to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Robert L. Eddleman, State Conservationist, at the above address or telephone 317-248-4350.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 14, 1983.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 83-16923 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Discrete Semiconductor Device; Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the approriate parameters for controlling export for reasons of national security.

TIME AND PLACE: July 12, 1983, at 9:30 a.m., Herbert C. Hoover Building, Room 5611, 14th Street and Constitution Avenue, N.W., Washington, D.C.

AGENDA: The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Subcommittee to public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, (202) 377-2583.

Dated: June 20, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-17094 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

SUMMARY: The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

TIME AND PLACE: July 21, 1983, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. The meeting will continue to its conclusion on July 22, in Room 3708, Herbert C. Hoover Building.

AGENDA: The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, 202 377-2583.

Dated: June 20, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-17089 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Export Trade Certificate of Review; Applications

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received applications for Export Trade Certificates of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether the certificates should be issued.

DATES: Comments on these applications must be submitted on or before July 15, 1983.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 6711, Washington, D.C. 20230.

Comments should refer to the applications as "Export Trade Certificate of Review, application number 83-00001, 83-0002 and/or 83-0004."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate. A certificate of review is to be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will:

1. result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Office of Export Trading Company Affairs has received the following applications for an Export Trade Certificate of Review:

Applicant: *International Development Institute,* Washington, D.C.

Application #: 83-00001.

Date Received: June 9, 1983.

Date Deemed Submitted: June 13, 1983.

Members in Addition to Applicant: None.

Summary of Application: The International Development Institute, a non-profit District of Columbia corporation, seeks certification of a proposal to establish and operate an exhibition facility, an educational center and a research and development service for the purpose of promoting export trade by domestic companies. It will do business eventually through three organizations:

A U.S. *International Trade Center* (operating under the name TRADEXPO) that displays products, services and appropriate technology related to basic human needs for direct sales to foreign buyers who visit the trade center.

A U.S. *International Education Center* that sponsors monthly conferences on trade, economic development and the latest technology having application to global basic human needs; that conducts undergraduate and graduate studies programs in international economics and development technology; that carries out multilingual technical training and extension services programs in the U.S. and overseas.

A U.S. *International Research Center* that researches and demonstrates state-of-the-art technology to trade center exhibitors and foreign buyers; that designs operating production units as models or "turnkey" projects for use in any country in the world; that provides technical services for overseas economic development projects.

Export trade activities to be supplied include, but are not limited to, travel arrangements, advertising/promotional services, data base, seminars and research. To facilitate the export of goods, insurance, financial and freight arrangements will be available.

Methods of operation may include exclusive supply contracts with domestic firms to provide some products and services upon the request of exhibitors and visitors. International Development Institute may also develop financial or other business criteria for the selection of exhibitors at the TRADEXPO facility, although the criteria will be applied without discrimination. No confidential domestic business information will be collected; International Development Institute may collect and publish confidential international business information in conjunction with research and educational services.

Applicant: *International Marketing and Procurement Services, Inc.*, Butler, Pennsylvania.

Application #: 83-00002.

Date Received: June 9, 1983.

Date Deemed Submitted: June 13, 1983.

Members in Addition to Applicant: None.

Summary of Application: On the 9th day of June, 1983, an Application for an Export Trade Certificate of Review pursuant to the provisions of Section 302(a) of the Export Trading Company Act of 1982, Pub. L. 97-290, was submitted to the Secretary of Commerce by International Marketing and Procurement Services, Inc., a Pennsylvania corporation with its principal office address of P.O. 1797, Butler, Pennsylvania 16001. The following is a summary of the export trade activities and methods of operation of International Marketing and Procurement Services, Inc. for Sports and Leisure Equipment and Services in its Export Markets in the Middle East (including the nations of Saudi Arabia, Oman, Kuwait, Bahrain, the United Arab Emirates, Qatar, Jordan, Iraq, Lebanon, Egypt, Sudan, Morocco and Syria), Europe (including the nations of the United Kingdom,

Ireland, France, Belgium, Netherlands, Germany, Switzerland, Greece, Italy, Spain, Portugal, Denmark, Finland, Norway, Sweden, Austria, Poland, Czechoslovakia and Yugoslavia), Australia and the Far East (including the nations of China, Taiwan, Japan, Philippines, Indonesia and Hong Kong) for which the Application was submitted:

A. *Export Trade Activities.*

1. To act as a representative for U.S. manufacturers of Sports and Leisure Equipment and Services in Applicant's Export Markets and to provide exporting services in connection therewith, including without limitation, consulting, international market research, advertising, marketing, insurance, product research and design, transportation, trade documentation and freight forwarding, communication, processing foreign orders, foreign exchange, financing, and taking title to goods.

2. To act as a broker for the purchase or sale of Sports and Leisure Equipment and Services on a straight commission or cost-plus commission basis in Applicant's Export Markets.

3. To act as a procuring agent for persons doing business in Applicant's Export Markets.

4. To provide sports and recreation consulting in Applicant's Export Markets, including without limitation, the development, design, installation and management of sports and recreation facilities and/or programs on a "turn-key" basis or otherwise.

5. To provide warehouse facilities in Applicant's Export Markets.

6. To establish and operate retail display sales facilities in Applicant's Export Markets.

7. To buy, sell, assemble and export Sports and Leisure Equipment and Services of all kinds.

B. *Methods of Operation.*

1. To enter into exclusive agency agreements with foreign persons for Sports and Leisure Equipment and Services.

2. To enter into exclusive sales agreements for Sports and Leisure Equipment and Services manufactured or supplied by U.S. companies to be sold in Applicant's Export Markets.

3. With respect to Sports and Leisure Equipment and Services, to establish uniform prices to be charged in Applicant's Export Markets and/or to allocate foreign territory among U.S. manufacturers represented by Applicant and the foreign distributors of such U.S. manufacturers and/or to establish such prices or quantities of goods or services to be exported as may be necessary from time to time to meet changing market conditions.

4. To refuse to do business with foreign competitors in the field of Sports and Leisure Equipment and Services, either alone or together with other foreign or domestic entities.

Applicant: *U.S. Farm-Raised Fish Trading Company, Inc.*, Jackson, Mississippi.

Application No.: 83-00004.

Date Received: June 9, 1983.

Date Deemed Submitted: June 13, 1983.

Members in Addition to Applicant:
Catfish Farmers of America ("CFA")
Delta Catfish Processors, Inc.
Fishland, Inc.
Farm Fresh Catfish Company, Inc.
ConAgra, Inc.

Summary of Application: The U.S. Farm-Raised Fish Trading Company, Inc. (Applicant) has filed an application with the United States Department of Commerce pursuant to 15 CFR Part 325 for a certificate of review to engage in the export trade of farm-raised fish. At least initially, the variety of fish involved will be exclusively farm-raised catfish primarily but not necessarily exclusively to be sold in Europe and the Far East. The Applicant will purchase fish from processors who are stockholders of the Applicant. The Applicant intends to receive bids from member processors for products to fill orders taken in export trade. This may or may not include bidding on a rotating basis. It is contemplated that the processor-members of the Applicant who sell in export trade will do so exclusively through the Applicant. The Applicant will resell the fish wholesale to foreign markets or to intermediary parties who shall agree in writing that the fish will all eventually be sold to foreign markets. New members of the Applicant will be accepted at the discretion of the Applicant's Board of Directors.

The Office of Export Trading Company Affairs is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register.** Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether certificates should be issued. Information submitted by any person in connection with these applications will be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Dated: June 21, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-17059 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Microcircuit Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Subcommittee was formed to study microcircuit and acoustic wave devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Time and place: July 12, 1983, at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C.

Agenda: The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Subcommittee to public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, (202) 377-2583.

Dated: June 20, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-17092 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 31, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for the purpose of maintaining a continuous review of the export control technical parameters, and to formulate recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

Time and place: July 12, 1983, at 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C.

Agenda: The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Subcommittee to public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act.

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FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, 202-377-2583.

Dated: June 20, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-17093 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States. Comments must be filed in accordance with § 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, Room 1523, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00308. Applicant: National Aeronautics and Space Administration, Goddard Space Flight Center Code 253, Greenbelt Road, Greenbelt, MD 20771. Instrument: Data Processing Equipment. Manufacturer: MacDonald Dettwiler & Associates, Ltd., Canada. Intended use of instrument: The instrument is intended to be used for studies of multispectral signatures of earth resources (forest, crops, etc.) over time and spatial signatures of earth resources which yield high geological or petrological value. Application received by Commissioner of Customs: July 8, 1982.

Docket No. 83-218. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Complete Sputter Cryo System, PSP-2000. Manufacturer: EMscope, United Kingdom. Intended use of instrument: The instrument is intended to be used for scanning electron microscope analysis of hydrated frozen biological specimens to explore cell microstructure in hydrated state without any chemical fixation. The instrument will also be used in general biology education involving microstructure in the courses: IAP #4340, Electron Microscopy and *HST-560J*, Radiation Biophysics. Application received by Commissioner of Customs: June 7, 1983.

Docket No. 83-219. Applicant: The Pennsylvania State University, Department of Biology, 208 Mueller Laboratory, University Park, PA 16802. Instrument: Scanning Microdensitometer, M85a. Manufacturer: Vickers Instruments, United Kingdom. Intended use of instrument: The instrument is intended to be used for analyzing microscopic sections of animal and human tissues (including brain, liver, muscle, lung and other tissues) at the subcellular and cellular level. Experiments will be conducted to develop quantitative cytochemical diagnostic procedures for early stages of pathogenesis and also to obtain more precise information relating to the mode of action of various toxicants in the initiation of various types of pathogenic responses. Application received by Commissioner of Customs: June 8, 1983.

Docket No. 83-220. Instrument: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Four Circle Diffractometer, Model D5030, and Accessories. Manufacturer: Robert Huber Diffraktionstechnik, West Germany. Intended use of Instrument: The instrument is intended to be used as the primary sample manipulator on the National Synchrotron Light Source High Energy Wiggler Beam Line. This beam line will deliver Monochromatic photons from the high field wiggler magnet onto the samples located at the center of the Eulerian circle of the diffractometer. The diffractometer will orient the samples, such that the analyzer arm and detector are in the correct orientation in reciprocal space to take data. The types of samples will range from two-dimensional liquid crystals, to bulk solids and liquids. Studies will be made of crystallographic structures, phase transformations, physical states, and electronic configurations of materials. Application received by Commissioner of Customs: June 7, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 17107 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Fall-Harvested Round White Potatoes From Canada; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of preliminary antidumping determination.

SUMMARY: The preliminary antidumping determination on fall-harvested round white potatoes from Canada is being postponed. We intend to issue it not later than September 7, 1983.

EFFECTIVE DATE: June 24, 1983.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–5414.

SUPPLEMENTARY INFORMATION: On March 8, 1983, we announced our intiation of an antidumping investigation to determine whether fall-harvested round white potatoes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of the antidumping law (48 FR 9677). The notice stated that we would issue a preliminary determination by July 19, 1983.

As detailed in the notice of initiation of the antidumping investigation, the petition alleges that imports from Canada of fall-harvested round white potatoes are being, or are likely to be, sold in the United States at less than fair value. Because of the number and complexity of the transactions and the number of respondents to be considered, we believe that this case is extraordinarily complicated in accordance with section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and additional time is necessary to make the preliminary determination. We intend to issue a preliminary determination not later than September 7, 1983.

This notice is published pursuant to section 773(c)(2) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-17100 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigation; Cyanuric Acid and its Chlorinated Derivatives From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating an antidumping investigation to determine whether cyanuric acid and its chlorinated derivatives from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of these products are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before July 18, 1983, and we will make ours on or before November 10, 1983.

EFFECTIVE DATE: June 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Petition

On June 3, 1983, we received a petition filed by counsel for Monsanto Industrial Chemicals Co. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports from Japan of cyanuric acid and its derivatives are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

The allegation of sales at less than fair value is supported by information on foreign market value and United States price obtained by the petitioner from independent market research in Japan, petitioner's sales force in the United States, and U.S. government statistics.

Critical circumstances have also been alleged under section 733(e) of the Act (19 U.S.C. 1673b(e)). We will make a determination regarding this issue on the date of our preliminary determination.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and have found that it meets these requirements.

Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether cyanuric acid and its chlorinated derivates from Japan are being, or are likely to be, sold in the United States at less than fair value. If the investigation proceeds normally, we will make our preliminary determination by November 10, 1983.

Scope of the Investigation

The merchandise covered by this investigation is cyanuric acid and its chlorinated derivatives, also known as isocyanuric acid, sodium dichloro isocyanurate, potassium dichloro isocyanurate, sodium dichloroisocyanurate dihydrate, and trichloro isocyanuric acid. This merchandise is currently classified under item number 425.1050 of the *Tariff Schedules of the United States Annotated.*

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and to make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided that the ITC confirms it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 18, 1983, whether there is a reasonable indication that imports of cyanuric acid and its chlorinated derivatives from Japan are materially injuring, or are threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, the investigation will proceed according to statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-17105 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards; National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of laboratory accreditation actions for May 1983.

The National Bureau of Standards announces the accreditation and renewal of accreditation of laboratories competent to perform specific tests on thermal insulation materials and freshly mixed field concrete under the National Voluntary Laboratory Accreditation Program. These actions taken in May 1983 are effective through June 30, 1984.

FOR FURTHER INFORMATION CONTACT:
Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Washington, DC 20234; (301) 921–3431.

SUPPLEMENTARY INFORMATION:

New Accreditation Actions for May 1983

Two laboratories were accredited in May 1983.

The name and address of each laboratory, the laboratory accreditation program and the test methods for which accreditation was granted are listed below:

Thermal Insulation Materials: Wiss, Janney, Elstner and Associates, Inc., Attn. Jerry G. Stockbridge, 330 Pfingsten Road, Northbrook, IL 60062, Phone: (312) 272–7400.

NVLAP code	Designation	Short title
01/T04	ASTM C236	Thermal Conductance; guarded hot box.

Freshly Mixed Field Concrete: Eastcoast Testing & Engineering, Inc., Attn: Craig S. Smith, 430 NW Flagler Drive, Ft. Lauderdale, FL 33301, Phone: (305) 523–4244.

NVLAP code	Designation	Short title
02/M01	ASTM C31	Making and curing concrete test specimens in the field.
02/M03	ASTM C172	Sampling fresh concrete.
02/P01	ASTM C143	Slump of Portland cement concrete.
02/W01	ASTM C138	Unit, weight, yield, and air content (Gravimetric) of concrete.
02/A01	ASTM C231	Air content of freshly mixed concrete by the pressure method.
02/S01	ASTM C39	Compressive strength of cylindrical concrete specimens.

Renewed Accreditation Action

Renewal of accreditation was granted to the following laboratory during May 1983, with no change in the test methods for which it was previously accredited. The laboratory received a certificate of accreditation and a corresponding list of test methods for which it was reaccredited. Anyone who wishes to know which test methods the laboratory is accredited for should contact the laboratory directly or Mr. Locke.

United States Gypsum Company, Research Center, 700 North U.S. Highway 45, Libertyville, IL 60048.

Dated: June 21, 1983.

John W. Lyons,

Acting Director, National Bureau of Standards.

[FR Doc. 83-17076 Filed 6-23-83; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1983 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: July 27, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT:
C. W. Fletcher; (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1983, November 18, 1982 (47 FR 52101):

Class 4240

Harness, Head, C15
4240–00–961–1064

Class 7530

Folder, File
7530–00–811–7169

SIC 7349

Janitorial/Custodial Services
Base and Survival School Buildings
2249C, 1224, 1302, 1306, 1336, 1344, 1348, 2248D, 2301, and 2451A
Fairchild Air Force Base, Washington

SIC 7699

Repair Services for the following items at Fort Bliss, Texas only:

Bag, Sleeping
8465–00–242–7855
8465–01–049–0088
Case, Sleeping Bag
8465–00–237–8719
Liner, Field Jacket
8415–00–782–2888
Liner, Trousers, Field
8415–00–782–2926
Bag, Barracks
8465–00–530–3692
Bag, Duffel
8465–00–141–0932
Repair Services for Electrode Holder Assemblies, Bremerton, Washington

C. W. Fletcher,

Executive Director.

[FR Doc. 83-17074 Filed 6-23-83; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board; Members

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of the name of members of the Performance Review Boards for the Department of the Army for 1983.

EFFECTIVE DATE: June 20, 1983.

FOR FURTHER INFORMATION CONTACT:
Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310; (202) 697–2204.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate the initial appraisal of senior executive's performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Each board's review and recommendation will include only those senior executive's appraisals from their respective commands or activities. A consolidated board has been established for those commands who do not have enough senior executives to warrant the establishment of separate boards. Publication of this notice rescinds notices published in 47 FR 120, dated 22 June 1982; 47 FR 130, dated 7 July 1982; and 47 FR 143, dated 26 July 1982, to account for additions and deletions to the membership of those boards previously published.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Robert K. Dawson, Principal Deputy Assistant Secretary (Civil Works).

2. Brigadier General Charles D. Bussey, Deputy Chief of Public Affairs, Office Secretary of the Army.

3. Mr. George L. Cary, Special for Assistant Legislative Affairs, Office Secretary of the Army.
4. Ms. Juanita P. Watts, Director, Office of Small and Disadvantaged Business Utilization, Office, Secretary of the Army.
5. Mr. Francis X. Plant, Deputy Assistant Secretary (DA Review Boards and Personnel Security), Office Assistant Secretary of the Army (Manpower and Reserve Affaris).
6. Mr. Dick M. Lester, Chief, Forces and Readiness, Office Under Secretary of the Army.
7. Mr. Peter Stein, Deputy Administrative Assistant to the Secretary of the Army.
8. Mr. Stanley N. Nissel, Deputy General Counsel (Logistics).
9. Dr. Robert E. Frese, Deputy Director for Engineering, Joint Tactical Communication (TRI–TAC) Office.
10. Mr. Joseph L. Miller, Deputy for Resource Analysis, Office Assistant Secretary of the Army (Installation Logistics and Technical Management).
11. Mr. Jack E. Hobbs, Deputy for Management and Programs, Office Assistant Secretary of the Army (Research, Development and Acquisition).

The members of the Performance Review Board for the Office of the Chief of Staff, Army, are:

1. Mr. Harlold L. Stugart, The Auditor General.
2. Mr. Michael A. Janoski, Deputy Auditor General.
3. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, Army Audit Agency.
4. Mr. Henry J. Fischer, Director, Acquisition and System Audits, Army Audit Agency.
5. Mr. Arthur T. Walker, Deputy Director of Army Budget, Office of the Comptroller of the Army.
6. Mr. Wayne M. Allen, Director of Cost Analysis, Office of the Comptroller of the Army.
7. Mr. Clyde E. Jeffcoat, Jr., Deputy Director, U.S. Army Finance and Accounting Center.
8. Brigadier General Robert B. Adams, Deputy Commanding General, U.S. Army Finance and Accounting Center.
9. Brigadier General Gerald R. Jennings, Director, Operations and Maintenance, Army, Office of the Comptroller of the Army.
10. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Directorate of Civilian Personnel, Office of the Deputy Chief of Staff for Personnel.
11. Major General Walter J. Mehl, Director, Manpower Programs and Budget, Office of the Deputy Chief of Staff for Personnel.
12. Mr. William M. Frailey, Chief, U.S. Army Civilian Personnel Center, Office of the Deputy Chief of Staff for Personnel.
13. Mr. Raymond J. Sumser, Director of Civilian Personnel, Directorate of Civilian Personnel, Office of the Deputy Chief of Staff for Personnel.
14. Major General John H. Mitchell, Director, Human Resources Development, Office of the Deputy Chief of Staff for Personnel.
15. Brigadier General William H. Gourley, Director of Enlisted Personnel Management, U.S. Army Military Personnel Center, Office of the Deputy Chief of Staff for Personnel.
16. Major General Homer S. Long, Jr., Assistant Deputy Chief of Staff for Operations and Plans.
17. Mr. Edgar P. Vandiver III, Technical Director, Office of the Deputy Chief of Staff for Operations and Plans.
18. Brigadier General Gerald G. Watson, Director, Nuclear and Chemical Directorate, Office of the Deputy Chief of Staff for Operations and Plans.
19. Mr. Charles N. Davidson, Technical Director, U.S. Army Nuclear Agency.
20. Mr. Joseph P. Cribbins, Special Assistant to the Deputy Chief of Staff for Logistics and Chief, Aviation Logistics Office, Office of the Deputy Chief of Staff for Logistics.
21. Major General Arthur Homes, Jr., Assistant Deputy Chief of Staff for Logistics, Office of the Deputy Chief of Staff for Logistics.
22. Brigadier General (P) James R. DeMoss, Director of Resources and Management, Office of the Deputy Chief for Logistics.
23. Brigadier General Kenneth A. Jolemore, Director, Supply and Maintenance, Office of the Deputy Chief of Staff for Logistics.
24. Mr. Roland E. Berg, Assistant Director for Maintenance Management, Office of the Deputy Chief of Staff for Logistics.
25. Dr. Robert J. Heaston, Weapons System Technology Manager, Office of the Deputy Chief of Staff for Research, Development, and Acquisition.
26. Mr. Charles H. Church, Assistant Director for Technology, Office of the Deputy Chief of Staff for Research, Development, and Acquisition.
27. Mr. William H. Winter, Director, Program and Systems Analysis Directorate, Ballistic Missile Defense Program Office.
28. Mr. William O. Davies, Director, Optics Directorate, Ballistic Missile Defense Advance Technology Center.
29. Mr. Donald S. Russ, Director, Radar Directorate, Ballistic Missile Defense Advance Technology Center.
30. Brigadier General (P) Leonard P. Wishart III, Assistant Division Commander, 1st Armored Division, U.S. Army Europe.
31. Mr. Phillip G. Hillen, Senior Transportation Advisor, Headquarters, Military Traffic Management Command.
32. Brigadier General Frank A. Ramsey, Assistant for Veterinary Services/Chief, Veterinary Corps, Office of The Surgeon General.
33. Major General Claude M. Kicklighter, Commanding General, U.S. Army Security Assistance Center, U. S. Army Materiel Development and Readiness Command.
34. Major General Max W. Noah, Director, Program Analysis and Evaluation, Office of the Chief of Staff, Army.
35. Brigadier General James W. Shufelt, Deputy Assistant Chief of Staff for Intelligence Automation, Office of the Assistant Chief of Staff for Intelligence.
36. Brigadier General Donald W. Hansen, Commanding General, U.S. Army Legal Services Agency.
37. Dr. Joyce L. Shields, Director, Manpower and Personnel Research Laboratories and Associate Director, U.S. Army Research Institute for Behavioral and Social Services.
38. Colonel (P) Michael L. Ferguson, Deputy Director of Material Plans and Programs, Office of the Deputy Chief of Staff for Research, Development and Acquistion.
39. Brigadier General Ray H. Lee, Deputy Director of Combat Support Systems, Office of the Deputy Chief of Staff for Research, Development and Acquisition.

The members of the Performance Review Board for the U.S. Army Materiel Development and Readiness Command are:

1. Major General Claude M. Kicklighter, HQ, U.S. Army Materiel Development and Readiness Command.
2. Major General Eugene S. Korpal, HQ, U.S. Army Materiel Development and Readiness Command.
3. Brigadier General Fred Hissong, Jr., U.S. Army Armament Materiel Readiness Command.
4. Brigadier General Howard C. Whittaker, U.S. Army Armament Research and Development Command.
5. Ms. Marie B. Acton, HQ, U.S. Army Materiel Development and Readiness Command.
6. Dr. Richard L. Haley, HW, U.S. Army Materiel Development and Readiness Command.

7. Mr. Edward Greiner, HQ, U.S. Army Materiel Development and Readiness Command.

8. Dr. Daniel P. Schrage, U.S. Army Aviation Research and Development Command.

9. Mr. Billy R. Gilliland, U.S. Army Communications-Electronics Command.

10. Mr. James E. Schell, U.S. Army Communications-Electronics Command.

11. Dr. Robert B. Oswald, Jr., U.S. Army Electronics Research and Development Command.

12. Mr. Robert O. Black, U.S. Army Missile Command.

13. Mr. Thomas W. Lovelace, U.S. Army Mobility Equipment Research and Development Command.

14. Mr. Richard T. Tarnas, U.S. Army Tank-Automotive Command.

15. Mr. Harry J. Peters, U.S. Army Test and Evaluation Command.

16. Mr. John W. Kramar, U.S. Army Materiel Systems Analysis Activity.

17. Dr. Robert E. Singleton, U.S. Army Research Office.

18. Mr. Donald B. Dinger, U.S. Army Foreign Science and Technology Center.

19. Dr. Robert J. Byrne, U.S. Army Natick Research and Development Laboratories.

20. Brigadier General William E. Potts, HQ, U.S. Army Materiel Development and Readiness Command.

21. Brigadier General Robert D. Morgan, U.S. Army Communications-Electronics Command.

22. Mr. A. David Mills, HQ, U.S. Army Materiel Development and Readiness Command.

23. Mr. J. Bruce King, HQ, U.S. Army Materiel Development and Readiness Command.

24. Mr. Thomas E. Daniels, U.S. Army Electronics Research and Development Command.

The members of the U.S. Army Corps of Engineers Performance Review Board are:

1. Brigadier General Jerome B. Hilmes, Commander, North Central Division.

2. Brigadier General Mark J. Sisinyak, Commander, Missouri River Division.

3. Brigadier General George K. Withers, Jr., Deputy Assistant Chief of Engineers, Headquarters, U.S. Army Corps of Engineers.

4. Mr. Richard C. Armstrong, Chief, Engineering Division, Ohio River Division.

5. Mr. Fred H. Bayley III, Chief, Planning Division, Lower Mississippi Valley Division.

6. Dr. Lewis H. Blakey, Chief, Planning Division, Directorate of Civil Works, Headquarters, U.S. Army Corps or Engineers.

7. Mr. Lester Edelman, Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

8. Mr. Ralph Loschialpo, Chief, Office of Personnel, Headquarters, U.S. Army Corps of Engineers.

9. Mr. Achiel E. Wanket, Chief, Engineering Division, South Pacific Division.

10. MG Richard Wells, Deputy Commander, U.S. Army Corps of Engineers.

11. BG C. E. Edgar III, Deputy Director of Civil Works, Headquarters, U.S. Army Corps of Engineers.

12. BG Forrest T. Gay III, Commander, South Atlantic Division.

14. Mr. Lloyd A. Duscha, Deputy Director for Engineering and Construction, Headquarters, U.S. Army Corps of Engineers.

15. Mr. John Harrison, Chief, Environmental Laboratory, Waterways Experiment Station.

16. Mr. Alfred P. Hutchinson, Chief, Construction-Operations Division, Southwestern Division.

The members of the Performance Review Board for the Office of The Surgeon General are:

1. Major General Edward J. Huycke, M.D., Deputy Surgeon General.

2. Major General H. Thomas, Chandler, D.D.S., Assistant Surgeon General for Dental Services/Director of Personnel.

3. Major General Garrison Rapmund, M.D., Commander, U.S. Army Medical Research and Development Command.

4. Brigadier General William P. Winkler, Jr., M.D., Director of Health Care Operations.

5. Brigadier General Lewis A. Mologne, M.D., Director of Professional Services.

6. Brigadier General France F. Jordan, Director of Resource Management.

7. Brigadier General Frank A. Ramsey, Assistant Surgeon General for Veterinary Services.

8. Dr. Gunter F. Bahr, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

9. Dr. Louis S. Baron, PhD, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research.

10. Dr. William R. Beisel, M.D., Deputy for Science, U.S. Army Medical Research Institute of Infectious Diseases.

11. Dr. Daniel H. Connor, M.D., Chairman, Department of Infectious and Parasitic Disease Pathology, Armed Forces Institute of Pathology.

12. Dr. Bhupendra P. Doctor, PhD, Director, Division of Biochemistry, Walter Reed Army Institute of Research.

13. Dr. Franz M. Enzinger, M.D., Chairman, Department of Soft Tissue Pathology, Armed Forces Institute of Pathology.

14. Dr. Samuel B. Formal, PhD, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

15. Dr. Elson D. Helwig, M.D., Chairman, Department of Skin and Gastrointestinal Pathology, Armed Forces Institute of Pathology.

16. Dr. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology.

17. Dr. Kamal G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.

18. Dr. Frank B. Johnson, M.D., Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology.

19. Dr. Karl M. Johnson, M.D., Program Director, Hazardous Viruses, U.S. Army Medical Research Institute of Infectious Diseases.

20. Dr. Arthur D. Mason, Jr., M.D., Chief, Laboratory Division, U.S. Army Institute of Surgical Research.

21. Dr. Fathollah K. Mostofi, M.D., Chief, Laboratory Division, U.S. Army Insitute of Surgical Research.

22. Dr. Henry J. Norris, M.D., Chairman, Department of Gynecologic and Breast Pathology, Armed Forces Institute of Pathology.

23. Dr. Howard E. Noyes, PhD, Associate Director for Research Management, Walter Reed Army Institute of Research.

24. Dr. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

25. Dr. James A. Vogel, PhD, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine.

26. Dr. Lorenz E. Zimmerman, M.D., Chairman, Department of Opthalmic Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the Consolidated Commands are:

1. Mr. Phillip G. Hillen, Senior Transportation Advisor, Headquarters, Military Traffic Management Command.

2. Mr. Allen J. Dowd, Special Assistant for Transportation Engineering, Headquarters, Military Traffic Management Command.

3. Brigadier General Archer L. Durham, USAF, Vice Commander, Headquarters Military Traffic Management Command.

4. Mr. Leonard J. Mabius, Senior Technical Director/Chief Engineer, U.S. Army Communications Command.

5. Major General Clarence E. McKnight, Jr., Commanding General, U.S. Army Communications Command.

6. Mr. Nicholas J. Arbia, Comptroller, U.S. Communications Command.

7. Mr. Feliciano Giordano, Technical Director, U.S. Army Communications Systems Agency.

8. Brigadier General Thurman D. Rodgers, Commanding General, U.S. Army Communications Systems Agency.

9. Major General William D. O'Leksy, Deputy Chief of Staff for Personnel, U.S. Army Forces Command.

10. Brigadier General John M. Brown, Deputy Chief of Staff Comptroller, U.S. Army Forces Command.

11. Mr. William S. Fraim, Civilian Personnel Director, U.S Army Forces Command.

12. Mr. Walter Howell, Civilian Personnel Director, U.S. Army Training and Doctrine Command.

13. Lieutenant General Robert L. Bergquist, Commanding General, U.S. Army Logistics Center and Fort Lee, TRADOC.

14. Mr. Leon F. Goode, Jr., Director, TRADOC System Analysis Activity.

15. Mr. Perry Stewart, Scientific Advisor (Logistics Combat Development), U.S. Army Logistics Center.

16. Mr. Darrell Collier, Scientific Advisor, TRADOC Combined Arms Test Activity.

17. Mr. Wilbur B. Payne, Director, TRADOC Operations Research Activity.

18. Mr. Arthur C. Christman, Jr., Scientific Advisor ODCS for Combat Development, U.S. Army Training and Doctrine Command.

19. Dr. Marion R. Bryson, Scientific Advisor, Combat Development Experimentation Command, U.S. Army Training and Doctrine Command.

20. Major General Charles C. Rogers, Deputy Chief of Staff for Personnel, United States Army Europe.

21. Mr. Andrew F. Foreman, Assistant Deputy Chief of Staff, Personnel (Civilian Personnel), United States Army Europe.

22. Mr. Peter Stein, Deputy Administrative Assistant, Office of the Secretary of the Army.

23. Mr. Harry M. West III, Deputy Director of Manpower, Plans and Budget, Office of the Deputy Chief of Staff for Personnel.

24. Mr. Dellon E. Coker, Special Assistant for Communications and Transportation, Office of the Judge Advocate General.

25. Dr. Robert J. Heaston, Weapons Systems Technology Manager, Office of the Deputy Chief of Staff for Research, Development and Acquisition.

26. Major General Robert H. Foreman, Chief of Staff, U.S. Army Training and Doctrine Command.

27. Brigadier General (P) James E. Drummond, Commander, U.S. Army TRADOC combined Arms Test Activity and Deputy Chief of Staff for Test and Evaluation, TRADOC.

Carol D. Smith,

Chief, Senior Executive, Service Office.

[FR Doc. 83-17154 Filed 6-23-83; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Task Force on the Role of C³ I in Strategic Deterrence will meet on July 11–12, 1983, from 9 a.m. to 5 p.m. each day, at 2000 N. Beauregard Street, Alexandria, VA. All session will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to the role of DOD/JCS C³ I systems in strategic deterrance and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classsified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander K. M. Cummings, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard St., Room 392, Alexandria, VA 22311. Phone (703) 756–1205.

Dated: June 21, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register, Certifying Officer.

[FR Doc. 83-17060 Filed 6-23-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-023]

Al Tech Specialty Steel Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On April 13, 1983, Al Tech Specialty Steel Corporation (Al Tech), P.O. Box 152, Dunkirk, New York 14048, filed with Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for certification of an eligible use of approximately 380,000 Mcf per year of natural gas which is expected to displace the use of approximately 2,739,912 gallons of No. 3 fuel oil (0.5–1.0 percent sulfur) per year at its steel manufacturing facility in Dunkirk, New York.

The eligible seller of the natural gas is J & L Oil and Gas Corporation, Newell Road, Dunkirk, New York 14048. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Steeet, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, a local distribution company.

Notice of that application was published in the **Federal Register** (48 FR 23882) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Al Tech's application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Al Tech's application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on June 16, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17122 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-171]

Quaker State Oil Refining Corp.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Quaker State Oil Refining Corporation (Quaker State), P.O. Box 336, Newell, West Virginia 26050, filed an application on June 7, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Congo Refinery in Newell, West Virginia, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Quaker State indicates that the volume of natural gas for which it requests certification is approximately 1,400,000 Mcf per year. This volume is estimated to displace the use of approximately 218,800 barrels of No. 6 fuel oil (2.0 percent sulfur) per year.

The eligible seller is Quaker State Oil Refining Corporation, Production Division, Oil City, Pennsylvania 16301. This gas will be transported by Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, West Virginia 25325 and by Columbia Gas of West Virginia, Inc., 44 16 Street, Wheeling, West Virginia 26003, a local distribution company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary, further notice will be given to Quaker State and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 16, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17121 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-10-NG]

Natural Gas Imports; Tennessee Gas Pipeline Company; Amended Application for Order Authorizing the Importation of Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of amendment to application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 2, 1983, of an amendment to the application previously filed by Tennessee Gas Pipeline Company (Tennessee) for authorization to import from Canada up to 309,000 Mcf per day of natural gas. The amendment would reduce the daily maximum quantity proposed to be imported to 209,000 Mcf.

The amended application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m., on July 25, 1983.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Forrestal Building, Room GA-007, Washington, D.C. 20585; (202) 252-9482

James B. McRae, Office of General Counsel, Natural Gas and Mineral Leasing, 1000 Independence Avenue, S.W., Forrestal Building, Room 6E-042, Washington, D.C. 20585; (202) 252-6667

SUPPLEMENTARY INFORMATION: On August 10, 1982, Tennessee filed an application to import up to 309,000 Mcf per day of Canadian natural gas during the period from November 1, 1984, until October 31, 2001, as more fully described in the Notice of Receipt of Application issued by the ERA on September 29, 1982 (47 FR 44135, October 6, 1982). The gas was to be purchased from three suppliers, Canadian-Montana Pipeline Company (Canadian-Montana), KannGaz Producers Ltd. (KannGaz) and Ocelot Industries (Ocelot), under separate gas purchase contracts with deliveries beginning on November 1, 1984, for the first two contracts and on November 1, 1985, for the Ocelot contract. Tennessee would receive up to 84,000 Mcf of gas per day from Canadian-Montana, up to 125,000 Mcf per day from KannGaz, and up to 100,000 Mcf per day from Ocelot.

On January 27, 1983, the National Energy Board of Canada (NEB) issued a decision in its Omnibus Gas Export hearing which, among other things, denied Ocelot permission to export gas from Canada. Due to the NEB's decision, Tennessee is amending its application to withdraw those volumes it proposed to import under the gas purchase contract with Ocelot.

It should be noted that beginning April 12, 1983, the Canadian Government established a new international border price of U.S. $4.40 per MMBtu which will be charged for the majority of natural gas being exported to the United States. The previous border price was $4.94. Under the terms of the Canadian-Montana and KannGaz contracts, the price for gas to be sold to Tennessee is the prevailing border price.

The NEB licenses issued to Canadian-Montana and KannGaz authorize the export of less volumes of gas to be sold to Tennessee over a shorter period of time than they had requested. However, both Canadian-Montana and KannGaz have advised Tennessee of their intention to seek approval from the NEB for the additional exports as provided for in their respective supply contracts. Therefore, Tennessee is not amending its application to conform with the volumes and schedule of deliveries reflected in the NEB licenses, but continues to request import authorization for the quantities of gas it has contracted to buy.

Other Information

Any person wishing to become a party to the proceeding, and thus to participate as a party in any conference or hearing which might be convened, must file a petition to intervene. Persons who have already petitioned for intervention in ERA Docket No. 82-10-NG need not file new petitions, but may submit additional comments as appropriate. All petitions for intervention filed in this docket up to this time in connection with the original application shall be considered timely submissions. Any person may file a protest with respect to this amended application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements that are specified by the regulations that were in effect on October 1, 1977, in 18 CFR 1.8 and 1.10. They should be filed with the Natural Gas Division, Economic Regulatory Administration, Room GA-007, RG-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. All protests and petitions to intervene must be filed no later than 4:30 p.m., July 25, 1983.

A hearing will not be held unless a motion is made by a party or person seeking intervention and is granted by the ERA, or if the ERA on its own motion believes that a hearing is necessary or required. A person filing a motion must demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, the ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Tennessee's amended application is available for inspection and copying in the Natural Gas Division Docket Room, located in Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on June 20, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17117 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

Morgan Services, Inc.; Application for Certification of the Use of Natural Gas To Displace Oil

[Docket No. 83-CERT-150]

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to that facility under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding this application is listed below, while more detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant: Morgan Services, Inc.

Date filed: May 27 and as amended June 2.

Facility location: Buffalo, N.Y.;

Gas Volume: 60,000 Mcf per year.

Oil Displacement: 431,640 gallons of No. 2 fuel oil (.28% sulfur).

Eligible seller: N.S. Energy, Buffalo, N.Y.

Transporter: National Fuel Gas Supply Corp., Buffalo, N.Y. National Fuel Gas Distribution Corp., Buffalo, N.Y.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on June 17, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-17012 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST83-395]

Cranberry Pipeline Corp.; Self-Implementing Transactions

June 17, 1983.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to Section 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to Section 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to Section 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any

interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to Section 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to Section 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G (HT)" or "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/Seller	Recipient	Date filed	Part 284, subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST83-395	Cranberry Pipeline Corp	Tennessee Gas Pipeline Co	5/25/83	C	10/21/83	60.00
ST83-396	do	Cabot Corp	5/25/83	C	10/21/83	60.00
ST83-397	Transcontinental Gas Pipe Line Corp	City of Union, SC	5/26/83	B	10/21/83	60.00
ST83-398	do	Washington Gas Light Co	5/26/83	B	10/21/83	60.00
ST83-399	do	The Brooklyn Union Gas Co	5/26/83	B	10/21/83	60.00
ST83-400	do	Delmarva Power and Light Co	5/26/83	B	10/21/83	60.00
ST83-401	do	South Jersey Gas Co	5/26/83	B	10/21/83	60.00
ST83-402	do	Public Service Electric and Gas Co	5/26/83	B	10/21/83	60.00
ST83-403	do	Pennsylvania Gas and Water Co	5/26/83	B	10/21/83	60.00
ST83-404	do	City of Greer, SC	5/26/83	B	10/21/83	60.00
ST83-405	do	City of Kings Mountain, NC	5/26/83	B	10/21/83	60.00
ST83-406	do	City of Greenwood, SC	5/26/83	B	10/21/83	60.00
ST83-407	do	Lynchburg Gas Co	5/26/83	B	10/21/83	60.00
ST83-408	do	City of Lexington, NC	5/26/83	B	10/21/83	60.00
ST83-409	do	North Carolina Natural Gas Corp	5/26/83	B	10/21/83	60.00
ST83-410	do	Piedmont Natural Gas Co	5/26/83	B	10/21/83	60.00
ST83-411	do	City of Shelby, NC	5/26/83	B	10/21/83	60.00
ST83-412	do	Public Service Co. of North Carolina	5/26/83	B	10/21/83	60.00
ST83-413	do	Southwestern Virginia Gas Co	5/26/83	B	10/21/83	60.00
ST83-414	do	City of Alexander, AL	5/26/83	B	10/21/83	60.00
ST83-415	do	City of Covington, GA	5/26/83	B	10/21/83	60.00
ST83-416	do	City of Social Circle, GA	5/26/83	B	10/21/83	60.00
ST83-417	do	United Cities Gas Co	5/26/83	B	10/21/83	60.00
ST83-418	do	City of Toccoa, GA	5/26/83	B	10/21/83	60.00
ST83-419	do	Carolina Pipeline Co	5/26/83	B	10/21/83	60.00
ST83-420	do	Clinton-Newberry Natural Gas Auth	5/26/83	B	10/21/83	60.00
ST83-421	do	Commonwealth Gas Pipeline Corp	5/26/83	B	10/21/83	60.00
ST83-422	do	City of Danville, VA	5/26/83	B	10/21/83	60.00
ST83-423	do	Fort Hill Natural Gas Auth	5/26/83	B	10/21/83	60.00
ST83-424	do	Eastern Shore Natural Gas Co	5/26/83	G	10/21/83	60.00
ST83-425	do	Atlanta Gas Light Co	5/26/83	B	10/21/83	60.00
ST83-426	do	Consolidated Edison Co. of NY, Inc	5/26/83	B	10/21/83	60.00
ST83-427	do	Philadelphia Electric Co	5/26/83	B	10/21/83	60.00
ST83-428	do	Texas Eastern Transmission Corp	5/27/83	G	10/21/83	60.00
ST83-429	Producer's Gas Co	Florida Gas Transmission Co	5/27/83	D	10/21/83	60.00
ST83-430	Southern Natural Gas Co	Producer's Gas Co	5/27/83	B	10/21/83	60.00
ST83-431	Tennessee Gas Pipeline Co	Esperanza Transmission Co	5/31/83	B	10/21/83	60.00
ST83-432	do	Southern Natural Gas Co	5/31/83	G	10/21/83	60.00
ST83-433	do	Southern Natural Gas Co	5/31/83	G	10/21/83	60.00
ST83-434	Michigan Gas Storage Co	Battle Creek Gas Co	5/4/83	B	10/21/83	60.00
ST83-435	United Gas Pipe Line Co	Eltex, Inc	5/31/83	B	10/21/83	60.00

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's regulations.
[2] The Interstate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated

[FR Doc. 83-17014 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-34-003, et al.]

Distrigas of Massachusetts Corporation, et al.; Filing of Pipeline Refund Reports and Refund Plans

June 17, 1983.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 29, 1983. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
5/13/83	Distrigas of Massachusetts Corp.	RP81-34-003	Report.
5/16/83	Sea Robin Pipeline Co.	RP81-73-003	Do.
5/17/83	Colorado Interstate Gas Co.	RP82-54-010	Do.
5/26/83	Mississippi River Transmission Corp.	RP81-129-008	Do.
5/27/83	Consolidated Gas Supply Corp.	RP80-135-026	Do.
6/3/83	Northern Natural Gas Co.	RP82-71-012	Do.
6/8/83	Southwest Gas Corp.	RP82-66-000	Do.

[FR Doc. 83-17015 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-551-000]

Florida Power & Light Co.; Notice of Filing

June 20, 1983.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), pursuant to Section 35.12 of the Commission's Regulations, tendered for filing on June 7, 1983, documents entitled St. Lucie Replacement Power Agreement between FPL and Orlando Utilities Commission dated March 14, 1983 (Agreement) as an initial rate schedule.

FPL states that Orlando Utilities Commission (OUC) has acquired a 6.08951% undivided interest in FPL's St. Lucie Unit No. 2, a nuclear generating facility. Under a separate agreement, the St. Lucie Nuclear Reliability Exchange Agreement (Exchange Agreement) OUC agrees to exchange to FPL the rights to one-half of its capacity and energy entitlements from SL-2 for an equivalent amount of capacity and energy from FPL's St. Lucie Unit No. 1, a nuclear generating facility already in service (SL-1).

Pursuant to the Agreement tendered for filing, FPL agrees to provide to OUC Replacement Power and Energy with respect to OUC's SL-1 and SL-2 entitlements if, and only if, FPL ceases to operate or reduces output from SL-1 or SL-2 (i) because the cost of energy that could have been generated by SL-1 or SL-2 would have been more expensive to FPL than the cost of energy available to FPL from sources other than SL-1 or SL-2 or (ii) because of valley load situations.

FPL requests the waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed rate schedule be made effective on the date FPL declares St. Lucie Unit No. 2 in firm operation which date is presently estimated to be on or about August 1, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17016 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-552-000]

Florida Power & Light Co.; Notice of Filing

June 20, 1983.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), pursuant to Section 35.13 of the Commission's Regulations, tendered for filing on June 7, 1983, documents entitled St. Lucie Delivery Service Agreement between FPL and Florida Municipal Power Agency (Agreement) as a change in a rate schedule.

FPL states that Florida Municipal Agency (FMPA) has acquired 8. 806% undivided interest in FPL's St. Lucie Unit No. 2, a nuclear generating facility. Under two separate agreements, (1) the St. Lucie Nuclear Reliability Exchange Agreement (Exchange Agreement), FMPA agrees to exchange to FPL the rights to one-half of its capacity and energy entitlements from SL-2 for an equivalent amount of capacity and energy from FPL's St. Lucie Unit No. 1, a nuclear generating facility already in service (SL-1) and (2) the St. Lucie Replacement Power Agreement (Replacement Power Agreement) under which, in certain instances, FPL will provide replacement power and energy to FMPA when SL-1 or SL-2 is operating at or below certain levels. Accordingly, the aggregate of FMPA's power and energy entitlement resulting from its ownership interest in SL-2, the Exchange Agreement and the Replacement Power Agreement are collectively described as FMPA St. Lucie Nuclear Power Resources.

Under the Agreement filed herewith, FPL proposes to provide the delivery of FMPA's St. Lucie Nuclear Power Resources from the St. Lucie Delivery Point to FMPA at Delivery Points designated by FMPA.

FPL requests and FMPA supports the waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed rate schedule be made effective on the date that St. Lucie Unit No. 2 is synchronized with FPL's system and begins production of test energy which date is presently estimated to be on or about June 17, 1983

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17017 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-553-000]

Florida Power & Light Co.; Notice of Filing

June 20, 1983

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), pursuant to Section 35.13 of the Commission's Regulations, tendered for filing on June 7, 1983, documents entitled St. Lucie Nuclear Reliability Exchange Agreement between FPL and Florida Municipal Power Agency (Agreement) as an initial rate schedule.

FPL states that Florida Municipal Power Agency (FMPA) has acquired a 8.806% undivided interest in FPL's St. Lucie Unit No. 2, a nuclear generating facility. Under the Agreements FMPA is to exchange to FPL one-half of its capacity and energy entitlements from SL-2 for an equivalent amount of capacity and energy from FPL's St. Lucie Unit No. 1, an existing nuclear generating facility. FPL further states it is the intent of the parties to the Agreement to share the risks that power and energy will not be available, or will be available in reduced quantities from the capacity exchanged from whatever reason.

FPL requests and FMPA supports waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed rate schedule be made effective on the date FPL declares St. Lucie Unit No. 2 in Firm Operation which date is presently estimated to be on or about August 1, 1983.

Any person desiring to be heard or to protest said filing should be file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should filed on or before July 6, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17018 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-793-001]

Florida Power & Light Co.; Notice of Compliance Filing

June 20, 1983.

Take notice that on May 27, 1983, Florida Power & Light Company (FPL), in compliance with the Commission's order issued November 30, 1982 (21 FERC Para. 61,226), and with the Commission's Order Further Revising Procedural Schedule, submitted for filing Phase III of the Company's Application for Increase in Electric Rates.

Florida Power & Light Company submitted revisions of the Company's FERC Electric Tariff First Revised Volume I, consisting of Resale Service Schedule FR-1 (Sheet Nos. 5 and 5a), Resale Service Schedule PR-2 (Sheet Nos. 6 and 6a) and Resale Service Schedule PRT-2 (Sheet Nos. 7, 7a and 7b). The rates contained in these revised sheets reflect the inclusion on an annualized basis of the costs associated with FPL's St. Lucie Unit No. 2.

FPL proposes to place the revised tariff sheets into effect, subject to a one day suspension and subject to refund, on the day that FPL declares the St. Lucie Unit No. 2 in commercial operation, but no sooner than the date that these costs are reflected in FPL's retail rates.

FPL will inform the Commission as established by the November 30, 1982 order, of the effective date of the step-three rates when the retail proceedings concerning the inclusion in rates of St. Lucie Unit No. 2 costs have been completed.

The step-three rates will produce an increase in revenues of approximately $23,243,000 over the step-two rates now in effect. These step-two rates will end June 30, 1984.

St. Lucie Unit No. 2 is scheduled to commence commercial operation on July 30, 1983, and according to FPL, notice has been served upon FPL's wholesale customers and the Florida Public Service Commission.

The Florida Power & Light Company requests a waiver of the Commission's filing requirements under Section 35.13 of FERC Regulations.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 30, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17019 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-555-000, et al.]

Indiana & Michigan Electric Co.; Notice of Compliance Filing

June 20, 1983.

Take notice that on May 20, 1983, Indiana & Michigan Electric Company refunded to Michigan Power Company and Northern Indiana Public Service Company, respectively, amounts collected in excess of the settlement rate levels. These refunds were ordered by FERC in its acceptance and approval of the Settlement Agreements among Indiana & Michigan Electric Company (I&M) and Michigan Power Company, Northern Indiana Public Service Company, Richmond Power and Light, fourteen municipal customers, Wabash Valley Power Association, Inc. and Wayne County Rural Electric Membership Cooperative.

The amounts refunded to Michigan Power Company and Northern Indiana Public Service Company are $841,587.23, and $2,669,568.99, respectively.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 29, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17020 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-201-000, et al.]

K N Energy, Inc.; Notice of Redesignation

June 20, 1983.

On April 15, 1983, K N Energy, Inc. (formerly Kansas-Nebraska Natural Gas Co., Inc.), filed in Docket No. G-201-000, *et al.*, an application requesting that it be designated as certificate holder under its new name in lieu of under its former name, Kansas-Nebraska Natural Gas Company, Inc. In accordance with a corporate name change, the jurisdictional natural gas operations are to be conducted under the name of K N Energy, Inc.

Accordingly, the authorizations issued by this Commission and by the Federal Power Commission, the applications currently pending before the Commission, the FERC Gas Tariff on file, and any other records or proceedings relating to the former Kansas-Nebraska Natural Gas Company, Inc., are hereby redesignated as those of K N Energy, Inc.

A listing of authorizations and pending proceedings is set forth in the appendix.

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's rules.

Kenneth F. Plumb,

Secretary.

K N Energy, Inc.

List of Pending and Completed Proceedings

G-201	G-2186	G-20,106
G-259	G-2392	G-20,583
G-421	G-2404	G-20,584
G-454	G-2411	CP60-45
G-525	G-6582	CP60-64
G-639	G-6866	CP60-82
G-683	G-9435	CP60-88
G-721	G-9437	CP61-142
G-793	G-9504	CP61-226
G-806	G-10,014	CP61-227
G-904	G-10,585	CP61-273
G-984	G-10,736	CP61-275
G-1394	G-11,850	CP61-282
G-1180	G-11,859	CP62-7
G-1532	G-12,391	CP62-38
G-1683	G-14,157	CP62-39
G-1827	G-17,303	CP62-209
G-1857	G-17,850	CP62-215
G-1970	G-17,839	CP62-248

CP62-249	CP70-249	CP80-139
CP63-28	CP70-258	CP80-143
CP63-89	CP71-143	CP81-15
CP63-104	CP71-149	CP81-86
CP63-180	CP71-211	CP81-202
CP63-229	CP72-27	CP81-430
CP63-265	CP72-103	CP82-59
CP63-340	CP72-150	CP82-97
CP64-86	CP72-204	CP82-237
CP64-210	CP72-296	CP82-364
CP64-286	CP73-124	CP82-366
CP65-79	CP73-186	CP82-511
CP65-80	CP73-224	CP83-65
CP65-289	CP74-23	CP83-73
CP66-133	CP74-125	CP83-140
CP66-134	CP74-164	CP83-233
CP66-241	CP74-169	RP64-16
CP66-251	CP74-200	RP71-5
CP66-256	CP74-201	RP72-32
CP67-117	CP74-278	RP74-11
CP67-118	CP74-299	RP76-8
CP67-235	CP75-27	RP77-5
CP68-127	CP75-57	RP78-10
CP68-180	CP75-89	RP79-8
CP68-235	CP75-168	RP81-50-000
CP68-314	CP75-177	RP82-8-000
CP68-367	CP75-321	TA80-1-53
CP69-138	CP75-334	TA81-1-53
CP69-147	CP76-146	TA82-1-53-000
CP69-201	CP76-207	TA83-1-53-000
CP69-233	CP77-10	ST82-31-000PST83-115-000
CP69-244	CP77-176	
CP69-271	CP77-214	
CP69-299	CP77-503	ST83-116-000
CP69-313	CP78-29	TC81-73-000
CP70-129	CP78-174	TC82-43-000
CP70-178	CP78-32	TC82-60-000
CP70-228	CP79-156	GP80-13
CP70-239	CP80-99	GT82-27-000

[FR Doc. 83-17021 Filed 6-23-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. EL83-24-000 and EL83-24-001]

Seminole Electric Cooperative and Florida Power & Light Co.; Notice of Filings

June 20, 1983.

Take notice that on June 9, 1983 (Docket No. EL83-24-000), Seminole Electric Cooperative ("Seminole") petitioned for declaratory orders (1) that upon the introduction (or availability for introduction) of electricity from its own power plant to serve its member loads in the service area of Florida Power & Light Company ("FPL"), currently scheduled to occur in June 1983, Seminole will become a partial requirements customer of FPL and hence must be served under an appropriate partial requirements rate schedule, and (2) that an issue ripe for trial in Docket No. ER82-793-000 is the propriety of FPL's PR-2 partial requirements rate schedule for service to Seminole. Seminole also moves for expedited action by the Commission. In the alternative, Seminole filed a conditional complaint under Section 206 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure, regarding the propriety of the PR-2 rate schedule as it relates to partial requirements service for Seminole. The complaint is only to be considered if the Commission's response is in the negative regarding the second issue set forth above for declaratory order.

On June 10, 1983 (Docket No. EL83-24-001), FPL petitioned for the Commission to issue a declaratory order interpreting the Service Agreement for the Supply of Wholesale Electric Power Service to Seminole dated September 1, 1982, between FPL, Seminole, and six of Seminole's members ("Service Agreement"). The Service Agreement was filed with the Commission on September 23, 1982 (Docket No. ER82-833-000).

FPL states that its request arises from Seminole's recently declared intention to schedule, in the near future, 200 MW of energy into FPL's system in order to serve certain of Seminole's member cooperatives whose full power requirements are now provided by FPL pursuant to the Service Agreement. FPL submits that it will suffer substantial harm from Seminole's failure to provide appropriate notice pursuant to termination provisions contained in the Service Agreement.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before July 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to these proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17022 Filed 6-23-83; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5932-001]

Hydro Management, Inc.; Surrender of Preliminary Permit

June 22, 1983.

Take notice that Hydro Management, Inc., Permittee for the Crane Creek Water Power Project, FERC No. 5932, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5932 was issued on May 28, 1982, and would have expired on November 30, 1983. The Project would have been located on Crane Creek in Lake County, Montana.

Hydro Management, Inc. filed the request on May 2, 1983, and the surrender of the preliminary permit for Project No. 5932 is deemed accepted as of May 2, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17079 Filed 6-23-83; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 4295-000]

Hydrokinetic Company; Surrender of Preliminary Permit

June 22, 1983.

Take notice that the Hydrokinetic Company, Permittee for the Aldrich Creek Project, FERC No. 4295, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4295 was issued on August 14, 1981, and would have expired on July 31, 1983. The project would have been located on Aldrich Creek in Whatcom County, Washington.

Hydrokinetic Company filed the request on April 18, 1983, and the surrender of the preliminary permit for Project No. 4295 is deemed accepted as of April 18, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17078 Filed 6-23-83; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 4871-003]

Modesto Irrigation District; Surrender of Preliminary Permit

June 22, 1983.

Take notice that Modesto Irrigation District, Permittee for the proposed Eltapom Creek Project No. 4871, has requested that its preliminary permit be terminated. The permit was issued on May 16, 1983, and would have expired October 31, 1984. The project would have been located on the Eltapom Creek in Trinity County, California.

The Permittee filed its request on May 25, 1983, and the surrender of the preliminary permit for Project No. 4871 is deemed accepted as of the filing date and is effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17080 Filed 6-23-83; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5165-001]

Modesto Irrigation District; Surrender of Preliminary Permit

June 22, 1983.

Take notice that Modesto Irrigation District, Permittee for the proposed Frazier Creek Project No. 5165, has requested that its preliminary permit be terminated. The permit was issued on March 12, 1982, and would have expired August 31, 1983. The project would have been located on Frazier Creek in Plumas County, California.

The Permittee filed its request on May 25, 1983, and the surrender of the preliminary permit for Project No. 5165 is deemed accepted as of the filing date and is effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-17061 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4937-002]

Modesto Irrigation District; Surrender of Preliminary Permit

June 22, 1983.

Take notice that Modesto Irrigation District, Permittee for the proposed Deer Creek Hydroelectric Project No. 4937, has requested that its preliminary permit be terminated. The permit was issued on May 12, 1982, and would have expired October 31, 1983. The project would have been located on the Deer Creek in Tehama County, California.

The Permittee filed its request on May 25, 1983, and the surrender of the preliminary permit for Project No. 4937 is deemed accepted as of the filing date and is effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

FR Doc. 83-17062 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board, Materials R&D Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Materials R&D Panel of the Energy Research Advisory Board (ERAB).

Date and time: July 15, 1983 from 8 a.m. to 4 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585

Contact: William Woodard, U.S. Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue SW., Washington, DC 20585; Telephone: 202/252-8933

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda:

- Discussion of Initial Working Draft Report on DOE's Materials R&D Programs
- Public comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Availabile for public review and copying at the Freedom of Information Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 17, 1983.

J. Ronald Young,

Director for Management, Office of Energy Research.

[FR Doc. 83-17123 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51471; TSH-FRL 2384-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 (a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558). and November 7, 1980 (45 FR 74378). This notice announces receipt of twelve PMNs and provides a summary of each.

DATES:

Close of review Period

PMN 83-813 and 83-814—September 3, 1983
PMN 83-815 and 83-816—September 4, 1983
PMN 83-817 and 83-818—September 5, 1983
PMN 83-819, and 83-820, 83-821, 83-822, 83-823, and 83-824—September 6, 1983

Written comments by

PMN 83-813 and 83-814—August 4, 1983
PMN 83-815 and 83-816—August 5, 1983
PMN 83-817 and 83-818—August 6, 1983
PMN 83-819 and 83-820, 83-821, 83-822, 83-823, and 83-824—August 7, 1983

ADDRESS: Written comments, identified by the document control number "[OPTS-51471]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-813

Manufacturer. Enwright Reaserch Corporation.

Chemical. (G) Cationic polymer.

Use/Production. (S) Water treatment and petroleum recovery. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-814

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) styrene, mixed acrylate copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, up to 1 da/yr, 2 persons/shift, 8 hrs/shift, 3 shifts/da.

Environmental Release/Disposal. Minimal release to land. Disposal by incineration, approved landfill and Resource Conservation and Recovery Act (RCRA).

PMN 83-815

Importer. Confidential.

Chemical. (G) Modified polyacrylate.
Use/Import. (G) Oil. Import range: Confidential.
Toxicity Data. Acute oral: < 5,000 mg/kg; Acute dermal: > 3,200 mg/kg: Irritation: Skin—Minimal, Eye—Minimal.
Exposure. Processing: dermal.
Environmental Release/Disposal. No release expected. Disposal by incineration.

PMN 83-816

Manufacturer. Confidential.
Chemical. (G) Alkenyl mercapto thiadiazole.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. Acute oral: 2.4 g/kg; Acute dermal: > 5 g/kg; Irritation: Skin—Mild, eye—Moderate; Ames Test: No genotoxic activity; HPC/DNA Repair Assay—Equivocal.
Exposure. Confidential.
Environmental release/Disposal. Confidential.

PMN 83-817

Manufacturer. Confidential.
Chemical. (G) Disperse blue azo dye.
Use/Production. (S) Industrial textile dye. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and disposal: dermal, a total of 49 workers, up to 12 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and land with 100–1,000 kg/yr to water. Disposal by wastewater treatment system and landfill.

PMN 83-818

Manufacturer. Confidential.
Chemical. (G) Disperse blue azo dye.
Use/Production. (S) Industrial textile dye. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, procssing and disposal: dermal, a total of 49 workers, up to 12 hrs/da, up to 180 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air with 10–100 kg/yr to water and land. Disposal by wastewater treatment system and landfill.

PMN 83-819

Manufacturer. Confidential.
Chemical. (G) Polymer of a long chain fatty acid, hydroxy functional alkane, phthalic acid, substituted and unsubstituted anhydrides and a hydroxy functonal resin.
Use/Production. (S) Industrial thermoset alkyd condensation polymer for coating metal surfaces. Prod. range: 4,000–36,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing, use and disposal: dermal, a total of 14 workers, up to 10 hrs/da, up to 40 manhours/yr.
Environmental Release/Disposal. Less than 10–100 kg/yr released to land. Disposal by approved landfill.

PMN 83-820

Manufacturer. Confidential.
Chemical. (G) Disubstituted heterocyclic azo disubstituted benzene.
Use/Production. (S) Dye for textiles. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,000 mg/kg; Acute dermal: < 1,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Acute aquatic effects (seven species): No adverse effects @ < 0.5 mg/1; Plant germination effects (three species): No adverse effects @ < 0.5 mg/1; Skin sensitization: Moderate.
Exposure. Manufacture, processing and use: dermal and inhalation, a total of 120 workers, up to .25 hr/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10–100 kg/yr released to water. Disposal by biological treatment system and incineration.

PMN 83-821

Manufacturer. Confidential.
Chemical. (G) Trisubstituted phenyl azo disubstituted heterocycle.
Use/Production. (S) Dye for textiles. Prod. range: Confidential.
Toxicity Data. Acute oral: 3,000 mg/kg; Acute dermal: < 1,000 mg/kg; Ittitation: Skin—Slight, Eye—Slight; Acute aquatic effects (seven species): No adverse effects @ 0.5 mg/1; Plant germination effects (three species): No adverse effects @ < 0.5 mg/1; Skin sensitiszation: Moderate.
Exposure. Maufacture, processing and use: dermal and inhalation, a total of 130 workers, up to .25 hr/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10–100 kg/yr released to water. Disposal by biological treatment system and incineration.

PMN 83-822

Manufacturer. Confidential.
Chemical. (G) Trisubstituted aniline.
Use/Production. (S) Dye intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: < 500 mg/kg; Acute dermal: < 1,000 mg/kg; Irritation: Skin—Slight, Eye—None.
Exposure. Manufacture and processing: dermal and inhalation.
Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 83-823

Manufacturer. Confidential.
Chemical. (G) Organofunctional polydimethylsiloxane.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 26 workers.
Environmental Release/Disposal. No release.

PMN 83-824

Manufacturer. Confidential.
Chemical. (G) Organofunctional polydimethylsiloxane.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 26 workers.
Environmental Release/Disposal. no release.

Dated: June 10, 1983.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 83-16535 Filed 6-23-83; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59129; TSH-FRL 2384-1]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of six applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Writen comments by July 11, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59129]" and the specific TME number should be sent to: Document

Control Officer (TS–793), Management Support Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107.

TME 83–59

Close of Review Period. July 20, 1983.
Manufacturer. Enwright Research Corporation.
Chemical. (G) Inorganic polyelectrolyte.
Use/Production. (S) Water treatment, papermaking. Prod. range: Confidential.
Toxicity Data. No data on the TME substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

TME 83–60

Close of Review Period. July 20, 1983.
Manufacturer. Enwright Research Corporation.
Chemical. (G) Inorganic polyelectrolyte.
Use/Production. (S) Water treatment, petroleum recovery. Prod. range: Confidential.
Toxicity Data. No data on the TME substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

TME 83–61

Close of Review Period. July 20, 1983.
Manufacturer. Enwright Research Corporation.
Chemical. (G) Inorganic polyelectrolyte.
Use/Production. (S) Water treatment, petroleum recovery. Prod. range: Confidential.
Toxicity Data. No data on the TME substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

TME 83–62

Close of Review Period. July 20, 1983.
Manufacturer. Enwright Research Corporation
Chemical. (G) Inorganic polyelectrolyte.
Use/Production. (S) Water treatment, petroleum recovery. Prod. range: Confidential.
Toxicity Data. No data on the TME substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

TME 83–63

Close of Review Period. July 20, 1983.
Importer. Confidential.
Chemical. (G) Substituted phosphonium borate.
Use/Import. (G) Rubber additive. Import range: Confidential.
Toxicity Data. Acute oral, LD_{50}:> 1,800 mg/kg of body weight; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. No direct exposure.
Environmental Release/Disposal. No data submitted.

TME 83–64

Close of Review Period. July 21, 1983.
Importer. Confidential.
Chemical. (G) Modified polyacrylate.
Use/Import. Confidential. Import range: Confidential.
Toxicity. Acute oral, LD_{50}:> 5,000 mg/kg; Acute dermal, LD_{50}:> 3,200 mg/kg; Irritation: Skin—Minimal, Eye—Minimal.
Exposure. Processing, dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

Dated: June 10, 1983.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 83-16536 Filed 6-23-83; 8:45 am]
BILLING CODE 6560-50-M

[OW-10-FRL-2297-3]

Draft General NPDES Permits for Oil and Gas Operations on the Outer Continental Shelf (OCS) of Alaska; Norton Sound and Beaufort Sea

AGENCY: Environmental Protection Agency.

ACTION: Notice of Draft General NPDES Permits.

SUMMARY: The Regional Administrator, Region 10, is today giving notice of two draft general National Pollutant Discharge Elimination System (NPDES) permits for oil and gas stratigraphic test and exploration wells in Norton Sound and Beaufort Sea. These draft general permits propose effluent limitations, standards, prohibitions, and other conditions on discharges from these facilities. The facilities covered in Norton Sound will be located in Federal waters seaward of the outer boundary of the territorial seas of the State of Alaska. Facilities covered in Beaufort Sea will be located in both Federal and State waters. The lands in Norton Sound are leased by the U.S. Department of the Interior's Minerals Management Service (MMS, formerly U.S. Geological Survey) and are described in the Environmental Impact Statement for OCS Lease Sale 57. The lands in Beaufort Sea are jointly leased by the Department of the Interior and the State of Alaska and are described in the Beaufort Sea Environmental Impact Statement for the Federal/State Oil and Gas Lease Sale BF.

DATES: *Comment Period*—Interested persons must submit comments on the draft general permits and Administrative records to the Regional administrator, Region 10 at the address below no later than August 10, 1983.

Public Hearings—Public Hearings on the Beaufort Sea proposed general permit will be held at: (1) North Slope Borough Assembly Room, Barrow, Alaska on July 27, 1983 at 6:00 p.m. and continuing on July 28, 1983 at 9:00 a.m., and (2) Federal Building, Room C121 701 C Street, Anchorage, Alaska on August 1, 1983 at 1:00 p.m.

Public hearings on the Norton Sound proposed general permit will be held at: (1) City of Nome, City Council Chambers, Nome, Alaska on July 29, 1983 at 1:00 p.m., and (2) Federal Building, Room C121 701 C Street, Anchorage, Alaska on August 2, 1983 at 1:00 p.m.

Hearings will continue until all persons have been heard. At this hearing you may submit oral or written statements concerning the draft general permits and administrative records.

ADDRESS: Public Comments should be sent to: Regional Administrator, Environmental Protection Agency, Region 10, 1200 Sixth Avenue M/S 601, Seattle, Washington 98101.

Administrative Record—The administrative records for these draft permits are available for public review at: (1) EPA Region 10, Room 10B, at the address listed above, and (2) Environmental Protection Agency, Alaska Operations Office, Room E 556, Federal Building, Anchorage, Alaska 99573.

FOR FURTHER INFORMATION CONTACT: Duane Karna, Region 10, at the address listed above or telephone (206) 442–1216. Copies of the draft general permits and fact sheet will be provided upon request.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR 122.28), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources: (1) Involve the same or substantially similar types of operations; (2) Discharge the same types of wastes; (3) Require the same effluent limitations or operating conditions; (4) Require similar monitoring requirements; and (5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Any owner or operator authorized to discharge under a general permit may be excluded from the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). Procedures for modification, revocation, termination, and processing of general permits are provided by 40 CFR 124.5–124.6. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act enforceable under Section 309 of the Act.

The Regional Administrator of Region 10 has determined that oil and gas facilities operating in the areas described in these general NPDES permits are more appropriately controlled by general permits than by individual permits. The decision of the Regional Administrator is based on an evaluation of the 403(c) Ocean Discharge Criteria (45 FR 65952), the applications received for Beaufort Sea and Norton Sound, and the Agency's recent permit decisions in other areas of the OCS. Exploratory facilities operating in or entering the geographic areas described in these general permits will be required to request coverage by the final general permit fourteen days prior to initiation of discharge and also submit to the Agency subsequent notification of commencement of operations at a new site, and termination of operations.

II. Nature of Discharge and Covered Facilities

The general permits proposed today are applicable only to exploratory facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435). The proposed permits will not authorize discharges into any wetlands adjacent to the territorial waters of the State of Alaska or from facilities in the Onshore and Coastal Subcategories as defined in 40 CFR Part 435.

Operations within the offshore subcategory can be divided into three phases: exploration, development, and production. Exploratory operations include the drilling of stratigraphic test wells to collect information on the underlying geological strata. These wells are frequently referred to as COST (Continental Offshore Stratigraphic Test) or DST (Deep Stratigraphic Test) wells. Exploratory operations also involve drilling to determine the nature of a hydrocarbon reserve after the seismic information has been obtained. These operations are usually of short duration at a given site, involve a small number of wells, and are generally conducted from mobile drilling units. In Beaufort Sea these operations are conducted from artificial islands constructed in accordance with permits issued by the U.S. Army Corps of Engineers. EPA is concerned over the adverse impacts of allowing several wells to be drilled at a single site, and invites comments on the appropriateness of limiting the maximum number of wells at single site to five during exploratory drilling.

These general permits allow discharges associated with exploratory drilling operations only. Development and production operations are not covered by these general permits.

The general permit will authorize the following discharges: drilling fluids (muds), drill cuttings and washwater, deck drainage, sanitary waste, domestic wastes, desalinization unit discharge, blow out preventor fluid, boiler blowdown, fire control system test water, non-contact cooling water, uncontaminated ballast water, uncontaminated bilge water, excess cement slurry, test fluids; and mud, cuttings, and cement at the ocean floor. Drilling muds and cuttings are the major pollutant source discharged from exploratory drilling operations.

III. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into ocean waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The final 403(c) Ocean Discharge Criteria guidelines published on October 3, 1980 (45 FR 65952), set forth specific criteria for a determination of unreasonable degradation that must be addressed prior to the issuance of an NPDES permit. The Ocean Discharge Criteria determinations, which evaluate the application of these criteria to the discharges covered by the proposed general permits, are contained in the administrative records for the draft permits.

The Regional Administrator has concluded that oil and gas facilities operating under the effluent limitations and conditions in these general NPDES permits will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines.

Principal concerns center around the environmental fate and effects of drilling muds in the marine environment. The Agency has prepared an extensive analysis (available in the administrative records) of the available information on the environmental fate and effects of drilling muds and cuttings discharged from oil and gas facilities. In general, drilling muds exhibit low toxicity. Available data indicate that EPA-approved muds, after dilution and dispersion beyond the mixing zone, will not have a significant adverse effect on marine organisms. Furthermore, discharges from exploratory drilling operations will be intermittent and limited to a relatively small number of sites.

Two areas covered under the BF general permit, involving discharges to shallow water (from the 2 m to the 5 m isobath) and to the Stefansson Sound Boulder Patch, are of particular concern. EPA has determined that controlled discharges of EPA approved muds to these areas will not cause unreasonable degradation of the marine environment. Monitoring is required to verify that the continued discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation.

IV. Conditions in the Draft General NPDES Permit

A. Geographic Area of the Proposed General Permits

1. *Beaufort Sea.* The areas covered by the Beaufort Sea general NPDES permit include all of the tracts in the 1979 joint Federal/State Lease Sale BF for Beaufort Sea (both Federal and State waters). These tracts are shallow water coastal areas that are mostly enclosed by barrier islands. Nearly all of the permit area lies within the 20 m isobath.

2. *Norton Sound.* The areas covered by the Norton Sound general NPDES permit include all tracts in OCS Lease Sale 57 seaward of the territorial seas of the State of Alaska (Federal waters only). These areas are located about 14 to 100 km offshore in water depths ranging from 5 to 27 m (average depth 18 m).

B. Technology-Based Effluent Limitations

These permits reflect BPT effluent limitations for the Offshore Subcategory (40 CFR Part 435). All permits effective or issued after July 1, 1984, are required by section 301(b)(2) of the Act to contain effluent limitations representing "Best Available Technology Economically Achievable" (BAT) for all categories and classes of point sources. Since BAT limitations have not been established, these draft permits have an expiration date of June 30, 1984, to comply with the statute.

BPT guidelines require a "no discharge of free oil" limitation for discharges associated with exploratory drilling operations. This limitation requires that a discharge shall not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR Part 435).

EPA is specifically requesting comments on a proposal to supplement the BPT limitation of "no discharge of free oil" with a laboratory sheen test requirement. Use of the laboratory sheen test should enhance the monitoring capabilities and provide for the detection of free-oil more accurately than by visual observation in Alaskan waters. The protocol for the laboratory sheen test is in part derived from the Environmental Protection Series EPA-R2-72-039, "The Appearance and Visibility of Thin Oil Films on Water."

As an alternative to the laboratory sheen test, EPA is considering the establishment of numeric limits on the concentration of oil and grease. These limits could be based on the following two different types of measurements: (1) Oil and grease in the liquid phase (from elutriate tests which separate particulates from the rest of the effluent), or (2) total extractable oil and grease, which includes measurement of oil and grease bound to particulates in the effluent.

A substantial fraction of the total oil and grease discharged with drilling fluids will be bound to drilling fluid particulates. Although elutriate tests will not measure this bound fraction, they can be useful in addressing water column effects. Elutriate tests may not, however, provide adequate information for addressing the effects on benthic communities of an effluent containing particulate-bound oil and grease.

The Agency is requesting comments on a data relevant to the following: (1) Is a numeric limit based solely on the elutriate test adequate for the protection of benthic communities? If so, what numeric limit should be imposed? Suggested numeric limits on the concentration of oil and grease in such effluents range from 10 to 72 mg/1; or (2) Should a numeric limit on the concentration of total extractable oil and grease be imposed (to identify oil and grease bound to particulates)? Should such a numeric limit replace or supplement an elutriate test? What numeric limit should be placed on total extractable oil and grease? A limit of 2,200 ppm has been proposed on the basis of a maximum value obtained for total extractable oil and grease concentration in an EPA approved drilling fluid.

The BPT limitation for sanitary waste requires that the concentration of chlorine be maintained as close to 1 mg/1 as possible in sanitary waste discharges from oil and gas facilities housing ten or more persons. Additionally, these general permits provide that any exploratory drilling vessel using an approved marine sanitation device that complies with Section 312 of the Act shall be in compliance with the final permit [40 CFR 140(2)].

C. Other Discharge Limitations

In addition to the BPT effluent limitations, the permits include other conditions which limit the discharge of toxic substances such as dispersants, surfactants, and detergents, and particular additives and heavy metals in drilling muds. These general permits do not allow the discharge of any constituent in concentrations which exceed applicable marine water quality criteria (45 FR 79318) after allowance for initial mixing (40 CFR 227.29).

The BF general permit contains the following operating conditions: (1) In water deeper than 5 m, the discharge of drilling muds and cuttings is allowed with flow limitations and predilution requirements but without field monitoring requirements (except for the bolder patch), (2) from water depths of 2 to 5 m, the dischagre of muds and cuttings is allowed with flow limitations, predilution *and* field monitoring requirements, and (3) from the mainland shoreline to water depths of 2 m, the discharge of muds and cuttings is prohibited during open water periods.

EPA is confronted with a lack of data on discharges of drilling muds to the shallow areas (0 to 2 m depths). The application of technical models is limited at these depths. Available data indicate that dilution and dispersion would generally be limited due to the small amount of tidal action and would depend mostly on periodic strong winds and storms. Thus, there is a significant potential for accumulation of drilling fluids in these areas. The shoreline waters of the Beaufort Sea 0 to 2 m deep provide important feeding and migratory habitat for a large number of species. Therefore, EPA cannot conclude that the discharge of muds and cuttings to these shallow receiving waters would not cause irreparable harm to the environment. EPA invites data and information from the public on the dispersion of muds and cuttings in this zone.

Regarding these shallow water discharge restrictions, EPA invites comments from: (1) resource agencies on the existence, susceptibility and significance of shallow water resources, (2) local governments on the location and significance of commercial and subsistence resources, (3) industry on alternatives for muds and cuttings discharge, including land disposal, and (4) other interested parties on any of the above issues.

The general permits contain effluent limitations or the predilution of drilling muds and cuttings and for the rate of discharge. The predilution requirement applies to all muds and cuttings discharges to water deeper than 2 m in the Beaufort Sea area. For the Norton Sound area predilution is only required for discharges in less than 20 m of water during the summer or for discharges which cannot be made onto stable ice in the winter. These limitations are designed to provide adequate dilution and dispersion of the wastes, based on previous field studies, and to protect water quality and aquatic resources.

E. Monitoring and Enforcement

These general permits require dischargers to report monthly on: (1) the daily maximum and monthly average flow of muds and cuttings discharge, (2) the daily results of the laboratory sheen test, and (3) the cholorine in sanitary waste discharges. Monthly flow rate estimates are required for deck drainage and sanitary and domestic wastes. The permittee must maintain a chemical inventory of all constituents added downhole and their volume. Other reports are required for the emergency use of non-approved drilling muds.

Field monitoring will be required in the BF area to assess the fate, effects, and presistence of drilling muds in shallow water (from 2 to 5 m) and in the boulder patch. Monitoring is to ensure that the continued discharge of effluents will not cause adverse accumulation or environmental impacts in these areas.

F. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by these permits are excluded from the provisions of section 311. However, these permits do not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of toxic pollutants which are covered by section 311 of the Act.

V. Other Legal Requirements

A. The Endangered Species Act

Based on information provided by the EIS prepared for each of the lease sale areas by the Bureau of Land Management, EPA has concluded that the discharges authorized by these general permits will neither jeopardize the continued existence of any endangered or threatened species nor adversely affect its critical habitat. Federal restrictions on drilling, as stipulated by MMS for the BF lease sale area, apply during the approximately two-month period in the fall when bowhead whales are present. The State of Alaska has imposed drilling restrictions in this lease area, which apply during the bowhead whale migration season and during periods of broken ice.

EPA will issue these permits subject to concurrence from NMFS and FWS and will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

B. The Coastal Zone Management Act (CZMA)

EPA has determined that the activities allowed by these general permits are consistent with the Alaska Coastal Zone Management Plan. The proposed permits and consistency certification will be submitted to the State of Alaska for State interagency review at the time of public notice issuance. The requirements for State Coastal Zone Management review and approval must be satisfied before general permits may be issued.

C. Marine Protection, Research and Sanctuaries Act (MPRSA)

No marine sanctuaries exist in the vicinity of the permit area.

D. State Certification

Since State waters are involved in the Beaufort Sea general permit, section 401 provisions of the Act must be satisfied before this permit is issued.

E. Economic Impact

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available in the administrative record.

F. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general NPDES permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* The information collection and notification requirements of these permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Act. The final general permits will explain how the information collection requirements respond to any OMB or public comments.

G. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these general permits will not have a significant impact on a substantial number of small entities. Moreover, they significantly reduce the administrative burden on regulated sources.

Dated: June 16, 1983.

L. Edwin Coate,

Acting Regional Administrator, Region 10.

[FR Doc. 83-17029 Filed 6-23-83; 8:45 am]
BILLING CODE 6560-50-M

[ORD-FRL 2388-6]

Acidic Deposition Phenomenon and Its Effects; Critical Assessment Review Papers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Public Review Draft and Change of Comment Period.

SUMMARY: The notice announces the availability of *The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Review Papers*, public review draft. This notice also announces that the EPA is changing the comment period on the public review draft to 45 days. A 90-day comment period had previously been anticipated (48 FR 22790).

DATES: Comments must be received on or before 5:00 p.m., Monday, August 8, 1983. Information concerning procedures for submitting comments is found on the final pages of the public review drafts.

SUPPLEMENTARY INFORMATION: The public review draft of *The Acidic Deposition Phenomenon and Its Effects: Critical Assessment Review Papers* is now available. Requests for copies of the draft should be made as prescribed in 48 FR 22790. The EPA is asking for comments on this document within the next 45 days. The EPA recognizes the difficulties that meeting this short deadline entails but has chosen this date because of an ongoing assessment of the acid deposition issue in response to a request of the President. Because this document may play a role in the Environmental Protection Agency's assessment, public comments at the earliest possible time are needed.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy A. Hood, CAD Coordinator, 1509 Varsity Drive, Raleigh, North Carolina 27606. Telephone: (919) 737-3520.

Dated: June 20, 1983.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 83-17044 Filed 6-23-83; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59125B/59126A; TSH-FRI 2388-2]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM-83-52, and TM-83-53, two applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: June 14, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, DC. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to

exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restriction on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and for the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. If the substance is shipped, the applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-52

Date of Receipt: May 5, 1983.

Notice of Receipt: May 13, 1983 (48 FR 21646).

Applicant: PPG Industries, Inc.

Chemical: Aromatic carbonate (Generic).

Use: Monomer to produce cured thermoset articles.

Production Volume: 4000 lbs.

Number of Customers: 9.

Worker Exposure: Manufacture: 2 workers, 30 minutes/day for up to 45 days. Processing: 18 workers, 8 hours/day for 2 days.

Test Marketing Period: 6 months.

Commencing on: June 14, 1983.

Risk Assessment: EPA identified certain health and environmental effect concerns for the TME substance. However, the submitter has stated in the application that various control measures will be taken to mitigate those concerns. Since the conditions in the application are binding, the Agency finds that, once they are met, the TME substances will not present an unreasonable risk to health or the environment during test marketing.

TME 83-53

Date of Receipt: May 10, 1983.

Notice of Receipt: May 20, 1983 (48 FR 22792).

Applicant: Confidential.

Chemical: Dimer fatty acids, monocarboxylic acid, and polyamines polymer, modified with an acrylic acid copolymer (Generic).

Use: Solvent-based flexographic printing inks.

Production Volume: Confidential.

Worker Exposure: Potential exposure will be via inhalation. At the manufactuing site, a maximum of 2 workers will be potentially exposed for 1 hour/day for one day. Exposure to workers during processing and use was not reasonably ascertainable by the submitter.

Test Marketing Period: Through 1983.

Commencing on: June 14, 1983.

Risk Assessment: The Agency identified no significant potential health or environmental effects of concern. Human exposure and environmental release during manufacture, processing, and use, under the conditions specified in the application are expected to be low. Therefore, the Agency finds that the TME substance will not present an unreasonable risk to health or the environment during test marketing under the conditions specified in the application.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: June 14, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-17035 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51472; TBH-FRL 2388-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register Of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of fifteen PMNs and provides a summary of each..

DATES: Close of Review Period:

PMN 83-825, 83-826 and 83-827—September 7, 1983.

PMN 83-828, 83-829, 83-830, 83-831, 83-832, 83-833, 83-834 and 83-835—September 11, 1983.

PMN 83-836, 83-837 and 83-838—September 12, 1983.

PMN 83-839—September 13, 1983.

Written comments by:

PMN 83-825, 83-826 and 83-827—August 8, 1983.

PMN 83-828, 83-829, 83-830, 83-831, 83-832, 83-833, 83-834 and 83-835—August 12, 1983.

PMN 83-836, 83-837 and 83-838—August 13, 1983.

PMN 83-839—August 14, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51472]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-825

Manufacturer. Confidential.

Chemical. (G) Disubstituted pyridinium bromide.

Use/Production. Confidential. Prod. range: 100-1,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 76 workers, up to 24 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and land with less than 10-100 kg/yr to water. Disposal by publicly owned treatment works (POTW), approved landfill or for treatment or recovery.

PMN 83–826

Manufacturer. Confidential.
Chemical. (G) Disubstituted pyridinium bromide.
Use/Production. Confidential. Prod. range: 100–1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and inhalation, a total of 76 workers, up to 24 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and land with less than 10–100 kg/yr to water. Disposal by POTW, biological treatment system and approved landfill or for treatment or recovery.

PMN 83–827

Manufacturer. Confidential.
Chemical. (G) Disubstituted pyridinium bromide.
Use/Production. Confidential. Prod. range: 100–1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and inhalation, a total of 76 workers, up to 24 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and land with less than 10–100 kg/yr to water. Disposal by POTW, approved landfill or for treatment or recovery.

PMN 83–828

Manufacturer. Andrews Paper and Chemical Company, Inc.Confidential.
Chemical. (G) Aliphatic sulfonate salt.
Use/Production. (S) Diazo reproduction paper for industrial and commercial use. Prod. range: 1,000–10,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: accidental dermal, a total of 21 workers, up to 1 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to water. Disposal by waste disposal companies.

PMN 83–829

Manufacturer. Confidential.
Chemical. (G) Bis(azo) substituted naphthalenedisulfonic acid, alkali metal salt.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 3 workers, up to 8 hrs per worker per batch.
Environmental Release/Disposal. No release. Disposal by waste water treatment plant.

PMN 83–830

Manufacturer. Confidential.
Chemical. (G) Arylazo disubstituted naphthalenedisulfonic acid, alkali metal salt.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 3 workers, up to 4 hrs per worker per batch.
Environmental Release/Disposal. No release. Disposal by waste water treatment plant.

PMN 83–831

Importer. Confidential.
Chemical. (G) Disazo solvent red dye.
Use/Import. (S) Industrial coloring engine fuels containing tetraethyl lead. Import range: 4,545–13,636 kg/yr.
Toxicity Data. Acute oral: > 5,000 mg/kg; LC_{50}, 96 hr (Minnow)—10–100 mg/l; EC_{50}, 24 hr (Daphnia magna) — > 500 mg/l; Skin sensitization: Negative.
Exposure. No exposure.
Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by incineration.

PMN 83–832

Importer. Confidential.
Chemical. (G) Prepolymerized halogenated magnesium, zirconium, aluminum oxo-titanate.
Use/Import. (S) Catalyst. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Use: dermal, a total of 1 worker, up to 1 hr/da, up to 100 da/yr.
Environmental Release/Disposal. 10–100 kg/yr released to water. Disposal by incineration and appropriate waste water system.

PMN 83–833

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Coconut oil epoxy polymer.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/day, up to 193 da/yr.
Environmental Release/Disposal. Release to land. Disposal by incineration, approved landfill or recovery.

PMN 83–834

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Coconut oil alkyd.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/day, up to 67 da/yr.
Environmental Release/Disposal. Release to land. Disposal by incineration, approved landfill or recovery.

PMN 83–835

Manufacturer. Confidential.
Chemical. (G) Substituted benzoate salt.
Use/Production. (G) Dilute polymer mixture. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 5 g/kg.
Exposure. Manufacture and use: dermal and ocular, a total of 6 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Confidential. Disposal by biological treatment system and approved landfill.

PMN 83–836

Manufacturer. Confidential.
Chemical. (G) Aliphatic esters.
Use/Production. (G) Industrial coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83–837

Manufacturer. Confidential.
Chemical. (G) Barium salts of aliphatic esters.
Use/Production. (G) Industrial coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by approved landfill.

PMN 83–838

Manufacturer. Confidential.
Chemical. (G) Calcium salts of aliphatic esters.
Use/Production. (G) Industrial coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83–839

Importer. Ilford, Incorporated.
Chemical. (S) 4-Nitrophenol-2-sulfonic acid, disodium salt.
Use/Import. (S) Oxidizing agent in photographic processing solutions.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 2–4 users.
Environmental Release/Disposal. Disposal by public and private sanitary waste water treatment facilities.

Dated: June 20, 1983.

Ronald A. Stanley,

Acting Director, Management Support Division.

[FR Doc. 83-17039 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00166; PH-FRL 2388-3]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Wednesday, July 13, and Thursday, July 14, 1983, beginning at 8:30 a.m. on July 13 and ending prior to 12 noon on July 14.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Waterside Mall, Rm. M-3906-3908, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, Rm. 1115B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the fifteenth meeting of the full Group. The tentative agenda thus far includes the folowing topics:

1. Action items from the March 1983 meeting of the SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: June 16, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-17038 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2375-6]

Availability of Environmental Impact Statements Filed May 23 Through May 27, 1983

Correction

In FR Doc. 83-14991 appearing on page 25270 in the issue of Monday, June 6, 1983, make the following corrections:

1. In the first column under US Army Corps of Engineers, in EIS No. 830277, third line, the date "July 28, 1983" should read "July 18, 1983".

2. Also under US Army Corps of Engineers, in EIS No. 830285, third line, the county name "Teham" should read "Tehama".

3. Under Department of Transportation, in EIS No. 830280, third line, the date "July 7, 1983" should read "July 18, 1983".

BILLING CODE 1505-01-M

[ER-FRL-2388-8]

Availability of Environmental Impact Statements Filed June 13 Through June 17, 1983 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, general information (202) 382-5075 or 382-5076.

Corps of Engineers:
- EIS No. 830324, Draft, COE, SEV, NY, NJ, Ramapo and Mahwah Rivers Flood Control Plan, Due: Aug. 8, 1983.
- EIS No. 830326, Draft, COE, VA, Portsmouth Coal Terminal Construction, Permit, Due: Aug. 8, 1983.
- EIS No. 830318, Final, COE, NC, Bogue Inlet Navigation Improvements, Onslow and Carteret Counties, Due: July 25, 1983.
- EIS No. 830316, D Suppl, COE, SC, Bushy Park Reservoir Protection, Cooper River, Berkeley County, Due: Aug. 8, 1983.
- EIS No. 830325, D Suppl, COE, IL, Moline Local Flood Protection Project, Rock Island County, Due: Aug. 8, 1983.

Department of the Interior:
- EIS No. 830322, Draft, BLM, WY, Adobe Town and Ferris Mtns. WSAs, Designation, Sweetwater/Carbon Counties, Due: Sept. 23, 1983.
- EIS No. 830287, Draft, BLM, NV, Shoshone-Eureka Resource Area, Resource Mgmt., Lander/Eureka/Nye Counties, Due: Sept. 21, 1983.
- EIS No. 830317, Final, BLM, CO, Glenwood Springs Resource Area, Resource Management Plan, Due: July 25, 1983.
- EIS No. 830327, Draft, IBR, UT, Diamond Fork Power System, Central Utah Project, Utah and Wasatch Counties, Due: Aug. 16, 1983.
- EIS No. 830320, Final, IBR, MT, Yellowstone River Diversion Project, Right-of-Way Permits, Dawson County, Due: July 25, 1983.
- EIS No. 830328, Draft, MMS, AK, 1984 Navarin Basin OCS Oil and Gas Sale, Leasing, Bering Sea, Due: Aug. 8, 1983.
- EIS No. 830329, Draft, MMS, MA, ATL 1984 North Atlantic OCS Oil & Gas Sale, Leasing, Atlantic Ocean, Due: Aug. 9, 1983.
- EIS No. 830330, Draft, MMS, CA, PAC 1984 Southern California OCS Oil/Gas Sale, Leasing, Pacific Ocean Due: Aug. 8, 1983.

Department of Transportation:
- EIS No. 830319, Final, FHW, FL, FL-820/ Hollywood Blvd. Upgrading, I-75 to FL-7 (US 441), Broward County, Due: July 25, 1983.

Department of Defense, Army:
- EIS No. 830321, Final, USA, GA, Fort Benning Ongoing Siting and Mission Activities, Due: July 25, 1983.

Department of Agriculture:
- EIS No. 830323, D Suppl, REA, SEV, CO NM Rifle-San Juan 345 kV Trans. Line/ Associated Facilities, Grant County, Due: Aug. 8, 1983.

Dated: June 21, 1983.

Pasquale A. Alberico,

Acting Director, Office of Federal Activities.

[FR Doc. 83-17075 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-683-DR]

Mississippi; Amendment To Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Mississippi (FEMA-683-DR), dated June 1, 1983, and related determinations.

DATED: June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of Mississippi dated June 1, 1983, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1983.

Washington Country for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-17053 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-683-DR]

Mississippi; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Mississippi (FEMA-683-DR), dated June 1, 1983, and related determinations.

DATED: June 16, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal

Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: The notice of a major disaster for the State of Mississippi dated June 1, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1983.

Issaquena, Leflore and Lowndes Counties for Individual Assistance.

Claiborne, Sharkey, Tallahatchie and Yazoo Counties as adjacent counties for Individual Assistance.

(Catalog of Federal domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 83-17046 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-680-DR]

Utah, Amendment to Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Utah (FEMA–680–DR), dated April 30, 1983, and related determinations.

DATED: June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: The notice of a major disaster for the State of Utah dated April 30, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 30, 1983.

Garfield, Piute, Summit, Box Elder and Weber Counties for Public Assistance.

Weber and Sevier Counties for Individual Assistance.

Morgan, Millard and Wasatch Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-17052 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Boatmen's Bancshares, Inc.; Acquisition of Bank Shares by a Bank Holding Company

Boatmen's Bancshares, Inc., St. Louis, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire at least 80 percent of the voting shares of Metro Bancholding Corporation, Crestwood, Missouri and thereby acquire an indirect interest in the subsidiary banks, Metro Bank/Clayton, MetroBank/Southwest County, and MetroBank/St. Louis. The factors that are considered in acting on the application are set forth section in 3(c) of the Act (12 U.S.C. 1842(c)).

Boatmen's Bancshare, Inc., St. Louis, Missouri, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire indirectly the voting shares of Metro Trust Company, Clayton, Missouri.

Applicant states that the proposed subsidiary would perform fiduciary, agency and custodial services to individuals, corporations and governmental entities. These activities would be performed from offices of the proposed indirect subsidiary in Clayton, Missouri, and the geographic area to be served is the St. Louis banking market. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than July 20, 1983.

Board of Governors of the Federal Reserve System, June 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-17054 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-02-M

Acquisition of Bank Shares by Bank Holding Companies; FirstBank Holding Co., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company* and *FirstBank Holding Company of Colorado*, both of Lakewood, Colorado; to acquire 100 percent of the voting shares or assets of FirstBank at County Line Road/Holly, N.A. Arapahoe County, Colorado, a *de novo* bank. Comments on this application must be received not later than July 20, 1983.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American Southwest Bancshares, Inc.*, El Paso, Texas; to acquire 100 percent of the voting shares or assets of American Bank of Commerce East, N.A., El Paso, Texas. Comments on this application must be received not later than July 20, 1983.

C. Federal Reserve Bank of San Francisco (Harry W. Gree, Vice President 400 Sansome Street, San Francico, California 94120:

1. *Wshington Indpendent Bancshares, Inc.*, Olympia, Washington; to acquire 100 percent of the voting shares of the successor by merger to Harbor Security Bank, McCleary, Washington. Comments on this application must be received not later than July 20, 1983.

Board of Governors of the Federal Reserve System, June 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-17055 Filed 6-23 83; 8:845 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Fort Madison Financial Co., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fort Madison Financial Company*, Fort Madison, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Iowa State Bank, Fort Madison, Iowa. Comments on this application must be received not later than July 20, 1983.

2. *Signal Bancorp*, Monticello, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of State and Savings Bank, Monticello, Indiana. Comments on this application must be received not later than July 20, 1983.

3. *State Banco, Ltd.*, Spirit Lake, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of The State Bank, Spirit Lake, Iowa. Comments on this application must be received not later than July 20, 1983.

4. *WB Financial Corp.*, Wayne, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Wayne Bank, Wayne, Michigan. Comments on this application must be received not later than July 8, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sand Springs Bancshares, Inc.*, Sand Springs, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of First Bank and Trust Company, Sand Springs, Oklahoma. Comments on this application must be received not later than July 13, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Tallulah Bancshares, Inc.*, Tallulah, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Tallulah State Bank and Trust Comapny, Tallulah, Louisiana. Comments on this application must be received not later than July 20, 1983.

2. *TexFirst Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Industrial Bank, Houston, Texas, and Northwest Bank and Trust, Houston, Texas. Comments on this application must be received not later than July 20, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington D.C. 20551:

1. *Korea First Bank*, Seoul, Korea; to become a bank holding company by acquiring 99.84 percent of the voting shares of Korea First Bank of New York, New York. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York. Comments on tis application must be received not later than July 20, 1983.

Board of Governors of the Federal Reserve System, June 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-17056 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-01-M

Swift Financial Corporation; Proposed Acquisition of Swift County Insurance Agency, Inc. and Old Northwest Casualty, Inc.

Swift Financial Corporation, Benson, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Swift County Insurance Agency, Inc., Benson, Minnesota and the assets of Old Northwest Casualty, Inc., d/b/a Chevalier Agency, Benson, Minnesota.

Applicant states that the proposed subsidiary would engage in the activities acting as agent for the sale of general insurance in a community with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Benson, Minnesota, and the geographic area to be served is the area within a 25 mile radius of Benson. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than July 20, 1983.

Board of Governors of the Federal Reserve System, June 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-17057 Filed 6-23-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de novo Nonbank Activities; Citicorp et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1)

of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer finance activities; Minnesota): To expand the activities of three existing offices of Citicorp Homeowners, Inc. and three existing offices of Citicorp Person-to-Person Financial Center, Inc., to include the *de novo* sale at retail of money orders and travelers checks. The proposed service area for the new activity for each of the offices shall be comprised of the entire State of Minnesota. This activity will be conducted from shared locations in Brooklyn Center, Burnsville, and Minnetonka, Minnesota, serving the State of Minnesota. Comments on this application must be received not later than July 19, 1983.

2. *Deutsche Bank AG*, Frankfurt, Federal Republic of Germany (data processing and bookkeeping and services; entire United States): To offer through its subsidiary, Deutsche Credit Corporation, data processing and transmission services, data bases and access to such services and data bases by any technologically feasible means where the data to be processed are financial, banking or economic, including, but not limited to, the preparation of financial management reports and the processing of information including information relating to accounts receivable, equipment securing such accounts receivable and commercial paper. The foregoing activities would be conducted by the Company from its main office in Bannockburn, Illinois, and from its various regional offices. At present, the Company has regional offices in Pittsburgh, Pennsylvania; Dallas, Texas; Atlanta, Georgia, Walnut Creek, California; and Libertyville, Illinois. The geographic area to be served will be the entire United States. Comments on this application must be received not later than July 8, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana (mortgage lending activities; Texas): To engage, through a branch office of its subsidiary, St. Joseph Mortgage Co., Inc., in originating, acquiring, selling, and servicing of residential, commercial, and industrial mortgage loans. Such activities will be conducted at an office located in Midland, Texas. The geographic area to be served will be approximately a 50 mile radius around Midland. Primary counties to be served by this office include Midland, Ector, and contiguous counties. Comments on this application must be received not later than July 13, 1983.

2. *State Bancshares, Inc.*, Schaller, Iowa (financing activities, Schaller, Iowa): To engage in making or acquiring loans and other extensions of credit such as would be made by a commercial financial company, including commercial loans secured by borrower's assets and servicing such loans for others in accordance with the Board's Regulation Y. These activities would be performed from an office in Schaller, Iowa, serving the community of Schaller, Iowa. Comments on this application must be received not later than July 13, 1983.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota (financing, insurance and travelers checks activities; Illinois): To continue to engage, through its subsidiary Norwest Financial Illinois, Inc. ("Norwest Financial/Illinois"), in the activities of consumer and sales finance, in the sale of credit life, credit accident and health, and property and casualty insurance, all directly related to extensions of credit by said subsidiary, in the offering for sale and selling of travelers checks; and to engage *de novo*, through its Norwest Financial/Illinois subsidiary, in the activity of consumer finance. Norwest Financial/Illinois engaged in consumer and sales finance and in the above credit-related insurance activities in Illinois at the time of its acquisition by Applicant, which acquisition occurred pursuant to a binding written contract entered into on or before May 1, 1982, thereby rendering said activities permissible under the terms of Section 601(D) of the Garn-St Germain Depository Institutions Act of 1982. This application is for the relocation of an existing office within Galesburg, Illinois and requests permission to engage *de novo* in the activity of commercial finance from said office as related. Upon relocation, this office will serve Galesburg, Illinois and nearby communities. Comments on this application must be received not later than July 14, 1983.

2. *Norwest Corporation*, Minneapolis, Minnesota (financing, insurance and travelers checks activities; Nevada): To continue to engage, through its subsidiaries Norwest Financial Nevada, Inc., Norwest Financial Nevada 1, Inc., and Norwest Financial Nevada 2, Inc., in the activities of consumer and sales finance, in the sale of credit life, credit accident and health, and property and casualty insurance, all directly related to extensions of credit by said subsidiaries, in the offering for sale and selling of travelers checks; and to engage *de novo*, through these subsidiaries, in the activity of consumer finance. Said subsidiaries engaged in consumer and sales finance and in the above credit-related insurance activities in Nevada at the time of their acquisition by Applicant, which acquisition occurred pursuant to a binding written contract entered into on or before May 1, 1982, thereby rendering said activities permissible under the terms of Section 601(D) of the Garn-St Germain Depository Institutions Act of 1982. This application is for the establishment of a *de novo* office in Sparks, Nevada and requests permission to engage *de novo* in the activity of commercial finance from said office. This office will serve Sparks, Nevada, other nearby communities of Reno, Nevada, and the City of Reno. Comments on this application must be received not later than July 14, 1983.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *RepublicBank Corporation*, Dallas, Texas (trust company activities; Texas): To establish three additional offices of its subsidiary, RepublicBank Trust Company, to perform activities that may be lawfully carried on by a trust company, in the manner authorized by federal and state law, including serving as trustee, providing stock transfer and registrar activities and providing agency and custodial services. These activities will be performed in the State of Texas and will be conducted from offices located in Harris County, San Antonio, and Richmond, Texas. Comments on this application must be received not later than July 20, 1983.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; expansion of geographic scope; Arkansas, Mississippi and Tennessee): To continue to engage, through its four indirect subsidiaries, FinanceAmerica Credit Corporation, a Delaware corporation, FinanceAmerica Corporation, a Louisiana corporation, FinanceAmerica Corporation, a Mississippi corporation, and FinanceAmerica Industrial Plan Inc., a Mississippi corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance, credit-related accident and health insurance and credit-related property insurance. (Property insurance will be offered only in Tennessee as permitted under Section 56–6–20 of the Tennessee Insurance Code. There will be no property insurance offered in either the States of Arkansas or Mississippi). The aforementioned types of credit-related insurance are permissible under Section 4(c)(8)(A) and/or 4(c)(8)(D) of the Bank Holding Company Act of 1956, as amended by the Garn-St Germain Depository Institutions Act of 1982. Such activities will include, but not be limited to, making consumer installment loans and loans to businesses, purchasing installment sales finance contracts, making loans and other extensions of credit secured by real and personal property, and offering credit-related life, credit-related accident and health and credit-related property insurance. These activities will be conducted from three existing offices located in Memphis, Tennessee; Shreveport, Louisiana; and Southaven, Mississippi. Both the Memphis and Shreveport offices will each serve the additional state of Arkansas. The Southaven office will serve the entire States of Mississippi, Arkansas and Tennessee. Comments on this application must be received not later than July 20, 1983.

2. *Security Pacific Corporation*, Los Angeles, California (financing, leasing and servicing activities; United States): To engage through its subsidiary, Security Pacific Public Finance, Inc., in governmental financing, leasing and servicing activities with respect to personal property and equipment and real property. These activities would be conducted from an office of Security Pacific Public Finance, Inc. in Los Angeles, California, serving the United States. Comments on this application must be received not later than July 20, 1983.

Board of Governors of the Federal Reserve System, June 20, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83–17058 Filed 6–23–83; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Vinton Corp. et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction and Waiting Period Terminated. Effective:

(1) 83–0372—The Vinton Corporation's proposed acquisition of voting securities of Oregon Portland Cement Company, June 9, 1983.

(2) 83–0382—Martin Marietta Corporation's proposed acquisition of all voting securities of Mathematica Incorporated, June 9, 1983.

(3) 83–0383—Joseph M. Cvengros' proposed acquisition of certain assets of Anaconda Metal Hose Division and Anaconda Magnet Wire Division (Atlantic, Richfield Company, UPE), June 9, 1983.

(4) 83–0388—The Continental Corporation's proposed acquisition of all voting securities of the CPI Group, Inc., (Automatic Data Processing, Incorporated, UPE), June 9, 1983.

(5) 83–0392—C. Malcom Cooper & Associates, Inc., (Richard J. Riordan, UPE) proposed acquisition of all voting securities of Continental Plastic Beverage Bottles, Inc., (The Continental Group, Inc., UPE), June 9, 1983.

(6) 83–0401—Chartrain Corporation's, (Raymond A. Rich, UPE) proposed acquisition of all voting securities of All-Steel Incorporated, (RCA Corporation, UPE), June 9, 1983.

(7) 83–0406—Amfac, Incorporated's proposed acquisition of all voting securities of Holmes Serum Company, Incorporated, (Henry L. Hillman, UPE), June 9, 1983.

(8) 83–0409—Stanhome, Incorporated's proposed acquisition of voting securities of Enesco Imports Corporation, June 9, 1983.

(9) Transaction Number 83–0330: Andrew Corporation's proposed acquisition of all assets of Grasis Corporation (August R. Grasis, UPE), June 1, 1983.

(10) Transaction Number 83–0331: Southeastern Savings and Loan Company's proposed acquisition of voting securities of Scottish Savings and Loan Association, Incorporated, June 2, 1983.

(11) Transaction Number 83–0334: IFINT S.A.'s proposed acquisition of voting securities of R.C. Cement Company, Incorporated, June 2, 1983.

(12) Transaction Number 83–0336: C. J. Giroir, Jr.'s proposed acquisition of all voting securities of National Bancshares Corporation, June 1, 1983.

(13) Transaction Number 83–0352: Minerals and Resources Corporation Limited's proposed acquisition of certain voting securities of Engelhard Corporation, June 2, 1983.

(14) Transaction Number 83–0353: Emerson Electric Company's proposed acquisition of Bell & Howell Magnetics, Inc.; Bell & Howell Devices, Inc.; Bell & Howell Electronic Systems, Inc.; and Data Laboratories Limited Plus, (Bell and Howell Company, UPE), June 1, 1983.

(15) Transaction Number 83–0358: Clevepak Corporation's proposed acquisition of voting securities of Interpace Corporation, June 2, 1983.

(16) Transaction Number 83–0359: Clevepak Corporation's proposed acquisition of all voting securities of Interpace Corporation, June 2, 1983.

(17) 83–0390—Grand Metropolitan Public Limited Company's proposed acquisition of

all voting securities of Children's World Incorporated, June 13, 1983.

(18) Transaction Number 83-0368: The National Federation of Agricultural Co-operative Associations' proposed acquisition of certain assets of Estech Incorporated, (Esmark, Incorporated, UPE), June 6, 1983.

(19) Transaction Number 83-0357: James River Corporation of Virginia's proposed acquisition of substantially all the assets of Diamond International Corporation, (Sir James Goldsmith, UPE) June 7, 1983.

(20) Transaction Number 83-0342: The Coca-Cola Bottling Company of New York Incorporated's proposed acquisiton of all voting securities of The Philadelphia Coca-Cola Bottling Company, (The Coca-Cola Bottling Company, UPE) June 6, 1983.

(21) 83-0431—Harvey Wagner's proposed acquisition of voting securities of Infoswitch Corporation, (Datapoint Corporation, UPE), June 14, 1983.

(22) 83-0387—Bouygues, S.A.'s proposed acquisition of all voting securities of HDR, Inc., (Charles W. Durham, UPE), June 14, 1983.

(23) 83-0398—Apex Oil Company's proposed acquisition of all assets of Commonwealth Oil Refining Company Incorporated, June 14, 1983.

(24) 83-0396 and 83-0397—Kaneb Services Incorporated's proposed acquisition of certain voting securities of Scientific Software Corporation in exchange for the assets of Intercomp Resources Development and Engineering, Incorporated, June 14, 1983.

(25) 83-0399—Grace Geothermal Corporation's proposed acquisition of certain assets of Shell California Production, Inc., (Royal Dutch Petroleum Company, UPE), June 14, 1983.

(26) 83-0404—Sperry Corporation's proposed acquisition of voting securities of Trilogy Limited, June 14, 1983.

(27) Transaction Number 83-0367: Hercules Incorporated's proposed acquisition of voting securities of Erbamont N.V. (Montedison, S.p.A., UPE), June 2, 1983.

(28) Transaction Number 83-0373: Monumental Corporation's proposed acquisition of all voting securities of First Federated Life Insurance Company, June 2, 1983.

(29) 83-0395—The Penn Central Corporation's proposed acquisition of all voting securities of Gulf Energy and Development Corporation, June 10, 1983.

(30) 83-0379—Reading & Bates Corporation's proposed acquisition of voting securities of Green Companies (Green International, Inc., UPE), June 10, 1983.

(31) 83-0380—Leighton Holdings Limited's proposed acquisition of voting securities of Green Companies, (Green International, Inc., UPE), June 10, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-17073 Filed 6-23-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 17.

Public Health Service

Food and Drug Administration

Subject: Poisoning Report (0910-0023)—Extension/no change
Respondents: Poison control centers located in public or private hospitals, health science universities or local public health agencies.
OMB Desk Officer: Richard Eisinger

National Institutes of Health

Subject: Application Materials: National Institutes of Health Medical Staff Fellowship Program (0925-0006)—Extension/no change
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for health

Subject: Evaluation of the National Center for Health Statistics Population Based Surveys—New
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: Prospective Evaluation of Hospital Personnel Exposed to Blood from Patients with Acquired Immune Deficiency Syndrome via the Parenteral Route—New.
Respondents: Hospitals and individuals
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: End Stage Renal Disease (ESRD) Medical Information System (HCFA-2744, 2745 and 2746)—Revision
Respondents: ESRD transplant facilities
Subject: Hospice Statements of Reimbursements (0938-0177)—Extension/no change
Respondents: Hospices participating in the Medicare Hospice Demonstration
Subject: Hospital and Hospital Health Care Complex Cost Report (HCFA 2552-63)—Revision
Respondents: Hospitals and hospital health care complexes participating in the Medicare program
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Office of Child Support Enforcement (OCSE) Quarterly Report of Collections (0910-0238, OCSE-34)—Revision
Respondents: State OCSE offices
Subject: Office of Child Support Enforcement (OCSE) Quarterly Application for Grant Award (0960-0239, OCSE-65)—Revision
Respondents: State OCSE offices
Subject: Office of Child Support Enforcement (OCSE) Quarterly Budget Estimates (0960-0226, OCSE-25)—Revision
Respondents: State OCSE offices
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer)

Dated: June 17, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-16864 Filed 6-23-83; 8:45 am]

BILLING CODE 4150-04-M

Low-Wage Labor Market Studies; Applications for Grants

Pursuant to Section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications from researchers affiliated with non-profit organizations for grants for research in the area of low-wage labor markets.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and

analysis relating to low-wage labor markets and the role of these markets in welfare policies. The following paragraphs describe this general area of interest in greater detail. Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

Low-wage labor markets are, of course, critical in providing employment and income to the low-income population. Within this population current and potential welfare recipients are a subject of major policy concern, and concern for them leads to an interest in the labor markets in which they participate. Improved understanding of the nature and operation of low-wage labor markets is thus critical for evaluating: (1) The role jobs in these markets do play in providing income for the low-income population, in particular for current and potential welfare recipients, and (2) the role they can be expected or encouraged to play in the future.

Specific questions that occur in this context include some of the following:

- What jobs offer stable employment and/or on-the-job training to low-wage workers? What other characteristics are associated with these jobs? What selection criteria do employers use to hire and retain employees for these jobs? Do the jobs and selection criteria vary with the characteristics of employees (including prior welfare receipt)?
- Do current or former welfare recipients generally find jobs that offer stable employment? To the extent that previous experience and schooling is an important selection criteria for jobs that offer stable employment, does a period of receipt of welfare income have a distinct effect on the probability of being hired and retained?
- Do current or former welfare recipients generally find jobs that offer on-the-job training? To the extent that employees bear the costs of on-the-job training, can employers be offered incentives in addition to wage subsidies to hire welfare recipients for jobs that offer on-the-job training?

To answer questions such as these, it is necessary to develop a much better understanding than is presently available of the low-wage labor markets in which the welfare population participates and of firms' decisions about hiring, training, retaining, and promoting low-wage workers.

Methods that are appropriate for project application include both theoretical work and empirical investigations that are well-grounded in economic theory. Projects with theoretical aspects should be designed to include meaningful empirical tests, or at least to lead to testable propositions. If these propositions are not testable with existing data, needs for further data should be explicitly elaborated.

Potential users of the research to be supported by these grants include employers, non-profit agencies assisting low-skilled workers with employment problems, university researchers, and various governments.

1. *Priority areas for research.*

a. *Characteristics in low-wage markets.* What charactristics in addition to wages distinguish low-wage jobs from high-wage jobs, and distinguish some low-wage jobs from others? Characteristics of particular interest may be identified with the employee (e.g., demographic characteristics, education, etc.), with the employer (e.g., nature of business, product demand, cyclical sensitivity, location, etc.), or with the jobs themselves (e.g., fringe benefits, turnover, potential for wage growth or promotion, on-the-job training, etc.).

Published research has investigated some of these characteristics, but this priority area deserves further exploration both to capture a finer level of detail on the relationships between the characteristics of employees, employers, and the jobs themselves, and to create a broader picture of the market or markets in which these characteristics are exchanged. Questions that may be addressed include: Are there several different markets for low-wage labor? Can different markets be distinguished by the employees and employers who participate in them, and thus by the characteristics exchanged in them? Are employees mobile among the markets in which they potentially participate?

Data from the Employment Opportunity Pilot Projects (EOPP) may be useful for examining this question. (Applicants may obtain information on these data with the application forms.) Other potential sources include the National Longitudinal Surveys and the Panel Study of Income Dynamics. Since it is possible that no single data set will have all the desired characteristics for this study, investigators are encouraged to explore possibilities for combining and piecing together information from a variety of sources.

b. *Trends in low-wage labor markets.* Trends in low-wage labor markets and important influences on these trends are also matters of great interest. Although previous research addresses many questions relevant to this priority area, developing a more comprehensive picture of the determinants of trends in the distribution of low-wage jobs is now necessary.

Questions that may be addressed in developing this comprehensive picture include: How has the number and distribution of low-wage jobs changed over time, say over the past twenty or twenty-five years? How has this accorded with trends such as those in occupations, regional and metropolitan economic development, occupational composition of employment within industries, shifts in the age/sex/race distribution of the population and the labor force, and changes in the population on welfare? Are the effects of changes in the firm's business environment, such as changes in the demand for final goods, taxes, or welfare and jobs programs, discernible?

Data limitations are expected to interfere with obtaining as detailed a picture of these trends as may be possible in studying the characteristics listed for priority area a. Nonetheless, creative use of available data such as those collected by the Bureau of Labor Statistics and the Census Bureau should enable a general picture to be drawn, particulary if combined with information derived from the first area.

c. *Firm employment decisions.* In addition to information on the array of jobs observable in the market, developing better information on how firms decide on the number and characteristics of the jobs they offer is also desirable. A variety of decisions are related to the characteristics and number of jobs firms offer to the market, such as the mix of capital and labor to employ, the wage and fringe benefit packages to offer, and choice of recruiting and hiring strategies. All of these decisions are arrived at by the firm in a context shaped by economic conditions, training programs and subsidies, and tax provisions such as property taxes, investment tax credits, depreciation allowances, and employment tax credits. Explanation of firms' employment decisions can serve to illuminate the patterns of jobs observed in priority areas a and b by focusing on the role of firms on the demand side of the labor market.

Questions relevant to studying demand for low-wage labor include: How are firms' decisions about production, physical and human capital investment, and employment and promotion of particular kinds of workers related? How have tax provisions, including both those aimed at promoting employment and those aimed at

promoting investment, affected these decisions?

While many of these questions have been investigated at length, the effects of firms' decisions on the jobs offered to low-skilled workers are not well understood. Exploration of this topic may require examining new and underexploited data sources, such as the data from EOPP. In addition, investigators may be able to make useful suggestions about specific needs for additional data and about methods for obtaining it.

2. *Types of projects excluded.*

In consideration of the intent of this announcement, applications proposing field survey operations, case studies of particular firms or industries, or concentrating primarily on the concerns of a local service delivery organization, will not be considered for funding.

The last decade of labor market research has significantly enhanced our empirical knowledge of the labor-supply decisions of workers, particularly low-income workers, and of the effects of specific government training programs. Our knowledge of these decisions is in marked contrast to our knowledge of other aspects of these labor markets, as articulated above. This grant announcement solicits research to explore heretofore unexamined or unconfirmed general economic relationships between low-wage labor markets and the welfare population. Consequently, it is not the intent of this grant announcement to promote research that concentrates on labor supply, nor on evaluations of specific government training programs, and application for projects of this sort will not be considered.

3. *Content and organization of application.*

The application must begin with a cover sheet, followed by the required application forms and an abstract of the application. Failure to include the abstract may result in delays in processing the application. The cover sheet should clearly specify which of the priority areas described above the application addresses. Applicants may apply to more than one priority area, using separate applications, or a joint application for priority areas a and b if a combined research project is proposed. The abstract should summarize the proposal in not more than two pages. Each application should carefully describe the issues to be examined, hypotheses to be tested, methodology proposed for testing the hypotheses, data sources to be used, and anticipated products of the research, as well as relating the expected products to policy issues. Resumes of staff should be included, as should a full budget for the proposed project.

B. Applicable Regulations

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the *Code of Federal Regulations* on October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), which was published in the *Code of Federal Regulations* on June 9, 1981.

C. Effective Date and Duration

1. The grant awarded to this announcement is expected to be made on or about September 30, 1983.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. Applicants should present a work plan and budget covering a one year period. Follow on funding for continued related work may be considered at the end of the first year. However, the respondents to this announcement are only required to submit an application for the first year; the applications will be evaluated only on the research proposed for the first year.

D. Statement of Funds Availability

1. It is expected that about $250,000 will be available for the award of grants pursuant to this announcement. It is expected that projects will be selected for funding in all three of the priority areas, but an award might cover more than one area should that course be determined to be in the best interests of the government. Approximately $75,000 is expected to be allocated to each priority area.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

E. Applications Processing

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. Ten (10) copies of each application are required except from government applicants, who may submit three (3) copies.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 30 double-spaced typed pages, exclusive of forms, abstract, resumes, and the proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in Section A above with improved bases for making decisions about these issues. (20 points.)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (20 points.)

c. The clarity of statement of objectives, methods, and anticipated results. (5 points.)

d. The appropriateness and soundness of methodology, including research design, statistical techniques, modeling strategies, choice of data, and other procedures. (25 points.)

e. The qualifications and experience of personnel. (30 points.)

F. Applications Sent by Mail

Applications sent by mail will be considered to be received on time by the Grants Officer if the application was sent by registered or certified mail not later than August 12, 1983, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 a.m. and 4:30 p.m., Washington, D.C., time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on Friday, August 12, 1983.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either: (a) Approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

I. Application Instructions and Forms

Copies of application forms and applicable regulations shall be obtained from, and applications submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 457F, Hubert H. Humphrey Building, Washington, D.C. 20201. Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after August 1, 1983.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

Dated: July 17, 1983.

Robert J. Rubin,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 83-1701 Filed 6-23-83; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[FDA 225-83-7000]

Memorandum of Understanding Between the Environmental Protection Agency and the Food and Drug Administration; Drug/ Pesticide Products for Use on or in Animals; Extension of Comment Period; Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) are extending the period for submitting comments on a Memorandum of Understanding on "drug/pesticide" products for use on or in animals. FDA has received several requests for the extension and is granting it. FDA is also staying the effective date.

DATE: Comments by August 19, 1983.

ADDRESS: Written comments, data, and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTRACT: Andrew Beaulieu, Bureau of Veterinary Medicine (HFV–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3044.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of May 20, 1983 (48 FR 22799) the Memorandum of Understanding defining the current responsibilities of FDA and EPA regarding drug/pesticide products for use on or in animals. Since the agreement shifted responsibility for certain products from EPA to FDA, a 30-day period for comments was provided.

Several parties have asked FDA to extend the comment period by 60 days. They said that the 30-day period given was not adequate to enable them to review and evaluate the effect of the agreement and to prepare comments on it.

After carefully evaluating the requests, FDA has concluded that an extension is appropriate to provde adequate time to prepare comments. FDA recognizes the significance of the issues involved and wishes to ensure that all interested parties have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended an additional 60 days.

In view of the extension of the comment period, the announced date of effectiveness of the Memorandum of Understanding, July 30, 1983, is stayed. The new date for the agreement to become effective is September 19, 1983, unless comments received by August 19, 1983, warrant further consideration by either agency. If this occurs, a further stay of the effective date will be announced in the **Federal Register**.

Interested persons may, on or before August 19, 1983, submit to the Dockets Management Branch (address above) written comments regarding this Memorandum of Understanding. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 20, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-17045 Filed 6-21-83; 3:34 pm]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. July 19, 8:30 a.m., Lister Hill Auditorium, National Institute of Health, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 5 p.m.; Mary Ann Tourault, National Center for Drugs and Biologics (HFN–830), Food and Drug Administration, Bldg. 29, 8800 Rockville Pike, Bethesda, MD 20205; 301–496–5241.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues ending before the committee.

Open committee discussion. The committee will consider current criteria for the safety and purity of plasma derivatives. This forum is designed to ascertain current research data regarding the etiology of Acquired Immunodeficiency Syndrome (AIDS), the clinical criteria for its diagnosis, and a possible relationship to the safety of plasma derivatives.

FDA public advisory committee meetings may have as many as four

separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: June 20, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–17151 Filed 6–23–83; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services,

President's Committee on Mental Retardation; Program Quarterly Full Committee Meeting

Times and Dates

June 27, 1983 from 7:30 am to 5:30 p.
June 28, 1983 8:30 am to 5:30 pm.
June 29, 1983 7:30 am to 4:00 pm.

Place

Napa Holiday Inn, 3425 Solano Avenue, Napa California.

Status

The meetings are open to the public. An interpreter for the deaf will be available upon advance requests. All locations are barrier free.

Matters To Be Discussed

(1) Reports by Steering Commettee will be given. The Commiteee plans to discuss critical issues concerning deinstitutionalization, prevention, family and community services, full citizenship, public awareness, simplification of service delivery and other issues relevant to the Committee's goals.

(2) The Committee acts in an advisory capacity to the President and the Secretary of Health and Human Services on matters relating to programs and services for persons who are mentally retarded.

(3) The Committee is charged with the responsibility of evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded. Contact person for more information: Dominic Mastrapasqua, Acting Executive Director, 300 "C" Street, S.W., Room 4061–North Building, Washington, DC 20201; (202) 245–7634.

Dominic J. Mastrapasqua,

Acting Executive Director President's Committee on Mental Retardation.

June 21, 1983.

[FR Doc. 83–17289 Filed 6–23–83; 9:15 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer, at (202) 395–7340.

Title: Contracts for Prospecting and Mining on Indian Lands (except oil and gas); Oil and Gas Mineral Contracts.

Bureau Form Numbers: BIA–5439, BIA–154h, BIA–155b, BIA–5424, BIA–154b, BIA–154e.

Frequency: On occasion.

Description of Respondents: Corporations, partnerships, individuals involved with leasing Indian minerals.

Annual Responses: 21,225.

Annual Burden Hours: 7181.25.

Bureau Clearance Office: Diana Loper (202) 343–3574.

Dated: June 15, 1983.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83–17111 Filed 6–23–83; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Southern Appalachian Federal Coal Production Region, Alabama; Draft Environmental Impact Statement (EIS) Availability

AGNECY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY. Pursuant of Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM), Department of the Interior, has prepared the Draft Southern Appalachian Regional Coal EIS II, which analyzes a second round of proposed competitive leasing of Federal coal in the Southern Appalachian Coal Production Region, Alabama Subregion. The BLM has made copies of the draft EIS available for public review and is seeking public comment on the document.

Four coal leasing alternatives are considered: (1) Lease 3 underground and 4 surface-minable tracts containing 180 million tons of in-place Federal coal resoruces; (2) lease 3 underground and 12 surface-minable tracts containing 184 million tons of in-place Federal coal resources; (3) lease 4 underground and 12 surface-minable tracts containing 211 million tons of in-place Federal coal resources; and (4) no further competitive Federal leasing (No Action).

In addition, the BLM is issuing a call for submission to the BLM of surface owner consents given by qualified surface owners that would permit surface mining of Federal coal on the identified tracts where the Federal coal is overlain by privately owned surface.

DATES: Written comments on the draft EIS will be accepted on or before August 31, 1983. A formal public hearing to accept written comments and to receive testimony will be held from 9:00 to 11:00 a.m. on August 31, 1983.

Information concerning the filing of surface owners consent agreements, or evidence thereof, is contained in the Supplementary Information section of this notice.

ADDRESSES: Written comments on the draft EIS should be sent to the EIS Team Leader, Jackson District Office, Bureau of Land Management, Jackson Mall Office Center, 300 Woodrow Wilson, Suite 3495, MS 39213. Single copies of the draft EIS may be obtained from the EIS Team Leader at the address listed above and from the Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 and the Office of Public Affairs, Bureau of Land Management, 18th and C Streets, N.W., Washington, D.C. 20240. Information related to surface owner consent agreements is contained in the Supplementary Information section of this notice.

FOR FURTHER INFORMAION CONTRACT: Bob Todd, EIS Team Leader, Jackson District Office, Bureau of Land Management, Jackson Mall Office Center, 300 Woodrow Wilson, Suite 3495, Jackson, MS 39213.

SUPPLEMENTARY INFORMATION: The draft EIS, which is part of the leasing process under the Federal Coal Management Program (43 CFR 3400), anaylzes the impacts that would result from the development of 16 Federal coal tracts proposed for leasing in a 3-county area of Alabama. In addition, the EIS analyzes the cumulative regional impacts of four alternative leasing levels, including the no action alternative, as well as other related regional developments in the Southern Appalachian Federal Coal Production Region, Alabama Subregion.

Public comments on the draft EIS are being sought before preparing the final EIS and should be sent to the EIS Team Leader at the address listed above. All comments on the draft EIS, whether oral or written, which are received by August 31, 1983, will receive equal consideration in the preparation of the final EIS.

A public hearing has been scheduled to accept written and/or oral comments on the draft statement. The hearing will consist of a morning session from 9:00 to 11:00 a.m. in the Black Warrior Room, Stagecoach Inn, 4810 Skyland Boulevard East, Tuscaloosa, Alabama, on August 31, 1983.

Those individuals wishing to testify in the public hearing should notify the EIS Team Leader in writing at the address listed above by August 26, 1983. This notification should identify the organization that is being represented (if speaking for an organization) and should be signed by the individual who will be testifying. The cutoff date is necessary so that a speaker's list can be reviewed in the BLM Eastern States and Jackson District Offices on the day before the public hearing.

Only one person will be allowed to represent the views of a single organization. However, if a member of an organization wishes to speak as a private citizen, the testimony will be permitted. Speakers will be heard in the order set forth on the list. After the last listed speaker has been heard, the presiding officer will consider the request of any person present who wishes to testify.

At the public hearing on the draft EIS, oral testimony of ten minutes duration will be accepted from each person in lieu of, or in addition to, any written comments. The 10-minute limitation will be strictly enforced by the presiding officer. The complete text of prepared remarks should be filed at the hearing and will be included as part of the hearing record regardless of whether or not the speaker completed those remarks in the allotted 10 minutes.

Copies of the draft EIS are available for inspection at the following locations:

Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Jackson District Office, Jackson Mall Office Center, 300 Woodrow Wilson, Suite 3495, Jackson, MS 39213

Office of Public Affairs, Bureau of Land Management, Room 5600, 18th and C Streets, N.W., Washington, D.C. 20240

In accordance with 43 CFR Part 3427 of the coal management regulations, the BLM is also requesting that written surface consent agreements, or evidence thereof, given by qualified surface owners for lands wihin the region be submitted to the appropriate BLM State Office at the address given above. Valid written consent for lands in which the ownership of the surface is held by qualified surface owners, where the ownership of the underlying coal is reserved to the Federal Government, will be accepted until a yet-to-be determined date prior to the lease sale for the specific lands involved. The actual deadline for submission of written consents shall be determined after the lease sale dates have been established, and shall be published in the **Federal Register**. It is the responsibility of parties intending to file consents to be aware of pending lease sale dates, as set forth in an announced regional lease sale schedule, and deadlines for submission of written consents as announced in the **Federal Register**. Section 714(c) of the Surface Mining Control and Reclamation Act (SMCRA) states that, "The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent."

As defined in the regulations (43 CFR 3400.0-5(gg)), qualified surface owner "means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (gg) (1) and (2) of this subsection for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (gg) (1) and (2) of this section. In computing the 3-year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage, if, during such periods, the relative would have met the requirements of this subsection.

Valid written consent is defined in the regulations (43 CFR 3400.5-5(qq)) as "the document or documents that a qualified surface owner has signed that: (1) Permit a coal operator to enter and commence surface mining of coal; (2) describe any financial or other consideration given or promised in return for the permission, including in-kind considerations; (3) describe any consideration given in terms of type or method of operation or reclamation for the area; (4) contain any supplemental or related contacts between the surface owner and any other person who is party to the permission; and (5) contain a full and accurate description of the area covered by the permission."

As required by 43 CFR 3427.29(d), it is the Bureau's responsibility to review all consents received. The Bureau will verify that the named surface owner is a

qualified surface owner as defined in the regulations and that the title for split estate lands described in the filing is held by the named qualified owner(s). In addition, to be considered valid, consents entered into after the August 3, 1977, enactment of the Surface Mining Control and Reclamation Act must be transferable to whomever makes the successful bid in a lease sale for the tract that includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies: (i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and (ii) neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise. If a filing is from anyone other than the named qualified surface owner, the Bureau shall contact the named qualified surface owner and request confirmation, in writing, that the filed, transferable, written consent, or evidence thereof, to enter and commence surface mining has been granted and that the filing fully discloses all of the items of the written consent.

To facilitate the filing and review of written consents from qualified surface owners, the person submitting the consent is asked to include a statement that the evidence submitted represents a true, accurate, and complete statement of information regarding the consent for the area described. Such a validation statement is required by 43 CFR 3427.3. The statement is to be signed and dated by the person submitting the consent and can be either incorporated directly into the consent document or enclosed as a separate item submitted with the consent document. The statement can be worded as follows: "I (We) hereby declare that the evidence submitted, to the best of my (our) knowledge, represents a true, accurate, and complete statement of information regarding the surface owner consent for the area described." This validation statement does not have to be witnessed or notarized.

A qualified surface owner that has not been contacted by, or requested to enter into any agreement with, a private party and who may wish to give consent to enter and commence surface coal mining may prepare, sign, and submit a consent document to the BLM Eastern States Office. The consent document should include the information and requirements specified earlier in this Notice in order to constitute a valid written consent as defined in the coal regulations (43 CFR 3400.0–5(qq)) and must indicate any specific terms the surface owner may request to allow permission to enter and commence surface coal mining. This unilateral consent document must be signed by a private party prior to the deadline for the filing of consents for the area affected, or the area affected will not be offered for lease sale.

In accordance with 43 CFR 3427.2(a)(2), written statements from qualified surface owners who refuse to consent to coal leasing may be filed with the Eastern States Office at the address given above. Early submission of a refusal to consent, hereby disqualifying the specified lands from further leasing consideration, will deter pressure from persons or parties seeking to enter into a consent agreement and will prevent continued inquiries by the BLM of the status of surface owner consent for the specified lands.

A Secretarial decision for leasing in the Southern Appalachian Region is expected in March 1984 after filing of the final EIS. As part of that decision the Secretary may choose to hold a series of lease sales beginning in May 1984.

Dated: June 21, 1983.

James M. Parker,

Acting Director, Bureau of Land Management.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83-17112 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Availability of the Adobe Town—Ferris Mountains Wilderness Draft Environmental Impact Statement

AGENCY: Rawlins District Office, Bureau of Land Management, Interior.

ACTION: Notice of Availability of the draft environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared the Adobe Town—Ferris Mountains Wilderness Environmental Impact Statement covering three wilderness study areas (WSAs) in the Divide, Medicine Bow, and Salt Wells resource areas in Wyoming. Copies of the document are available for public review and comment.

In addition, notice is also given that a public hearing, as required by Section 3(d) of the Wilderness Act, will be held in Rawlins, Wyoming, on July 26, at 7 p.m., in the Jeffrey Center, 3rd and Buffalo Streets. Written and oral comments on the Wilderness EIS will be received at that time.

DATES: Written comments on the proposed action and alternatives contained in the draft EIS will be accepted through September 23, 1983.

ADDRESSES: Written comments on the draft EIS should be sent to: District Manager, Bureau of Land Management, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82301. The draft EIS is available for inspection at the Rawlins District Office, 1300 North Third Street, Rawlins, Wyoming 82301.

SUPPLEMENTARY INFORMATION: Environmental impacts that would result from implementation of the proposed action and alternatives have been analyzed in the draft EIS. The proposed action for the two Adobe Town WSA's is No Wilderness, Intensive Resource Management. The alternatives are: No Action, Existing Management; Partial Wilderness; and All Wilderness.

The proposed action for the Ferris Mountains WSA is Wilderness Management. Tha alternatives are: No Action, Existing Management, No Wilderness; and Enhanced Wilderness Management.

All comments will be considered. Those that raise questions or issues concerning the effects of the proposed actions or alternatives, present new data, or question facts or analyses will be responded to in the final EIS.

FOR FURTHER INFORMATION CONTACT: Bob Tigner or Gary Long, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82301, Telephone (307) 324–7171.

David J. Walter,

District Manager.

[FR Doc. 83-16567 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf Offshore Southern California; Availability of Draft Environmental Impact Statement and Intent to Hold Public Hearings Regarding Proposed Southern California Oil and Gas Lease Offering of February 1984

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service

(MMS) has prepared a draft environmental impact statement (EIS) relating to a proposed southern California oil and gas lease offering consisting of about 11.6 million acres of submerged lands on the Outer Continental Shelf (OCS) offshore southern California scheduled for February 1984.

Single copies of the draft EIS can be obtained from the Regional Manager, Pacific OCS Region, Minerals Management Service, 1340 W. 6th Street, Los Angeles, California 90017.

Copies of the draft EIS will also be available for review in the following public libraries:

W. Valley Reg. Branch Library, 19036 Vanowen Street, Reseda, CA 91335
County of Los Angeles Library, Government Publications Unit, 320 W. Temple, Los Angles, CA 90012
San Diego County Law Library, 1105 Front Street, San Diego, CA 92101
San Diego Public Library, Science and Industry Dept., 820 "E" Street, San Diego, CA 92101
Culver City Library, 4975 Overland Avenue, Culver City, CA 90280
San Bernardino County Free Library, 104 W. 4th Street, San Bernardino, CA 92401
Downey City Library, 8490 E. 3rd Street, Downey, CA 90241
Santa Ana Public Library, Documents Section, 26 Civic Center Plaza, Santa Ana, CA 92701
Long Beach Public Library, Government Publications Dept., Ocean and Pacific, Long Beach, CA 90802
University of California Library, Government Publications Dept., P.O. Box 5900, Riverside, CA 92123
California State Polytechnical University Library Documents Section, San Luis Obispo, CA 92701
San Diego County Library, 5555 Overland Avenue, San Diego, CA 92123
California Lutheran College Library, Mountclef Village, Thousand Oaks, CA 91360
Anaheim Public Library, 500 West Broadway, Anaheim, CA 92805
Bodkin, McCarthy, Sargent & Smith, 707 Wilshire Blvd., 51st Floor, Los Angeles, CA 90071
Oceanside Public Library, 615 4th Street, Oceanside, CA 92054
Business & Economics Dept., Los Angeles Public Library, 630 W. 5th Street, Los Angeles, CA 90071
California State University, Oxiatt Library, Documents Section, P.O. Box 771, Ventura, CA 93001
San Diego State University Library, 5300 Campanile Drive, San Diego, CA 92182
San Diego State University, Malcolm A. Love Library, Government Publications Dept., San Diego, CA 92182
California State University Library, Documents Section, P.O. Box 4150, Fullerton, CA 92634
California Institute of Technology, Millikan Memorial Library, Pasadena, CA 91124
Riverside Public Library, P.O. Box 468, Riverside, CA 92506
Pepperdine University Library, 8035 S. Vermont, Los Angeles, CA 90044
Pasadena Public Library, 285 E. Walnut Street, Pasadena, CA 91101
University of California, Serials, SIO Library, C-075C, La Jolla, CA 92093
San Clemente Library, 242 Avenida Del Mar, San Clemente, CA 92672
University of Southern Calif., Government Documents Dept., P.O. Box 77983, Los Angeles, CA 90007
County of Ventura Library, Government Document, 18111 Nordhoff Street, Northridge, CA 91220
Loyola University, School of Law Library, 1440 W. 9th Street, Los Angeles, CA 90015
The Sea Library, 498 Sycamore Road, Santa Monica, CA 90402
University of California, Government Publication Dept., General Library, P.O. Box 19557, Irvine, CA 92713
Santa Barbara Public Library, Reference Section, P.O. Box 1019, Santa Barbara, CA 93102
University of California, Water Resources Center Archives, 2081 Engineering 1, Los Angeles, CA 90024
Santa Monica Public Library, 1343 6th Street, Santa Monica, CA 93102
Pomona College Documents Collection, Honnold Library, 222 E. 9th Street, Claremont, CA 91711
University of California, The Library Government Publication Dept., Santa Barbara, CA 93106

In accordance with 30 CFR 256.26(b), public hearings will be held on July 26, 1983, in the Cooper Room of the San Diego Convention and Performing Arts Center, 202 C Street, San Diego, California 92101; the Long Beach Convention Center, California Room No. 1, 300 East Ocean Boulevard, Long Beach, California 90802; and the Santa Cruz Room of the Ventura Holiday Inn, 450 Harbor Boulevard, Ventura, California 93001. The hearings will begin at 8:30 a.m., local time. The purpose of the hearings is to receive comments regarding the southern California OCS lease offering proposal.

The hearings will provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential effects of leasing oil and gas tracts offshore southern California. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings, are requested to contact the Regional Manager, Pacific OCS Region, Minerals Management Service, at the above address or by phone at (213) 688-7234, by 4:00 p.m. July 20, 1983. Written comments from those unable to attend the public hearing also should be addressed to the Regional Manager, Pacific OCS Region, Minerals Management Service at the above address. The MMS will accept written testimony and comments on the draft EIS until August 16, 1983. Time limitations make it necessary to limit the length of oral presentation to ten (10) minutes. An oral statement may be supplemented, however, by a more complete written statement which may be submitted to the hearing officer at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered as part of the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearing officer will give others present an opportunity to be heard.

After testimony and comments have been received and analyzed, a final EIS will be prepared.

Dated: June 21, 1983.

Dave Russell,

Acting Director, Minerals Management Service.

Approved: June 21, 1983.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83-17134 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must

follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team No. 1 at (202) 275–7992.

Decision Volume No. OP1–226 (F)

Decided: June 14, 1983.

By the Commission, Review Board Members Joyce, Carleton, and Fortier.

MC 168510, filed June 2, 1983. Applicant: ERNEST ROY JOHNSON, Route 1, Box 38, Jasper, MN 56144. Representative: Ernest Johnson (same address as applicant). Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

MC 168551, filed June 9, 1983. Applicant: BRUCE MAYES, d.b.a. MAYES BUS LINES, Route 2, Emory Road, Knoxville, TN 37918. Representative: Jess D. Campbell, 205 Clinch Ave., Knoxville, TN 37902, (615) 546–2141. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Decision Volume No. OP1–228 (F)

Decided: June 13, 1983.

By the Commission, Review Board Members, Joyce, Dowell, and Krock.

MC 154720 (Sub-1), filed May 24, 1983. Applicant: GARDEN STATE TOURS, 211 St., Mihiel Drive, Riverside, NJ 08075. Representative: Elliott Bunce, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703)–522–0900. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168231(A), filed May 23, 1983. Applicant: ISLANDER TRANSIT COMPANY, CORP., Oceanfront at Stanton Rd., Wildwood Crest, NJ 08260. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043, (703)–442–8330. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

Note.—Applicant has concurrently filed for passenger contract authority docketed MC–168231(B) published in this same **Federal Register** issue.

MC 168231(B), filed May 23, 1983. Applicant: ISLANDER TRANSIT COMPANY, CORP., Oceanfront at Stanton Rd., Wildwood Crest, NJ 08260. Representative: Barry Weintraub, Suite 403, 7700 Leesburg Pike, Falls Church, VA 22043, (703)–442–8330. Transporting *passengers*, between points in the U.S. (except AK and HI), under continuing contract(s) with (a) Wildwood Board of Education, (b) Wildwood Catholic High School, (c) Wildwood Crest Board of Education, (d) Bal Harbor Motor Inn, (e) Waikiki Motor Inn, and (f) Islander Tours, Inc., all of Wildwood, NJ.

Note.—Applicant has concurrently filed for charter and special operations authority docketed MC–168231(A) published in this same **Federal Register** issue.

MC 168370, filed May 31, 1983. Applicant: MILES L. MC GRAW & ROGER M. MC GRAW d.b.a. MC GRAW TRUCKING, 1705 Janie, Billings, MT 59105. Representative: Joe Gipe, 5516 Laurel Rd., Billings, MT 59107–1135, (406)–248–3602. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 168400, filed May 31, 1983. Applicant: E & Y CUSTOM TOURS, INC., 102–10 66th Rd., Forest Hills, NY 11375 Representative: Irving Klein, 1205 Franklin Ave., Garden City, NY 11530, (516)–746–3050. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168421, filed June 2, 1983. Applicant: LIBERTY SHUTTLE CORPORATION, 66–10 Thornton Place, Forest Hills, NY 11375. Representative: Morton E. Kiel, Two World Trade

Center, Suite 1832, New York, NY 10048, (212) 466–0220. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

Decision Volume No. OP1–230

Decided: June 14, 1983.

By the Commission, The Review Board, Members Williams, Joyce, and Fortier.

MC 168461, filed June 3, 1983. Applicant: HACKBARTH DELIVERY SERVICE, INC., 1111 S. Beltline Hwy., Suite 110, Mobile, AL 36606. Representative: Robert E. Hackbarth, 701 E. Salvia St., Mobile, AL 36606, (205)478–6956. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in Mobile and Baldwin Counties, AL, on the one hand, and, on the other, points in Escambia and Santa Rosa Counties, FL.

Decision Volume No. 234

Decided: June 15, 1983.

By the Commission, the Review Board, Members Dowell, Carleton, and Fortier.

MC 168550, filed June 9, 1983. Applicant: ADH SERVICES INC., 120 South 20th Street, Irvington, NJ 07111. Representative: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. As a *broker* of *general commodities (except household goods), between points in the U.S. (except HI).*

Decided June 13, 1983.

Decision Volume No. OP1–236 (F).

By the Commission, The Review Board Members, Dowell, Joyce, and Krock.

MC 158661 (Sub–1), filed June 6, 1983. Applicant: JUDITH A. NEELY AND JOHN W. NEELY, d.b.a. 4–J DISTRIBUTING COMPANY, 13812 Hearthside Place, Farmers Branch, TX 75234. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 168391, filed May 31, 1983. Applicant: UPPER MIDWEST ASSEMBLY & DISTRIBUTION COMPANY, 20385 Iberia Ave., West Lakeville, MN 55044. Representative: Richard L. Gill, 1805 American National Bank Bldg., Saint Paul, MN 55101, (612) 224–9454. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

MC 168420, filed June 1, 1983. Applicant: LENORA GREGORY, d.b.a. L. G. CHARTER SERVICE, 5101 Pembridge Ave., Baltimore, MD 21215. Representative: Lenora Gregory (same address as applicant), (301) 466–4276. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168430, filed June 3, 1983. Applicant: ERIEVIEW BROKERS, INC., 100 Erieview Plaza, Cleveland, OH 44114. Representative: Colin Barrett, 11764 Indian Ridge Rd., Reston, VA 22091, (703) 860–8521. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

MC 168490, filed June 7, 1983. Applicant: SOMERSET LIMOUSINE SERVICE, INC., d.b.a. AEROBUS, 104 Park St., Troy, MI 48084. Representative: Robert D. Schuler, 100 W. Long Lake Rd.—Suite 102, Bloomfield Hills, MI 48013, (313) 645–9600. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168511, filed June 7, 1983. Applicant: JAMES J. KASPER, d.b.a. Wisconsin Freight Brokers, 2503 Rudolph Rd., Eau Claire, WI 54701. Representative: James J. Kasper (same address as applicant), (715) 834–5790. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

MC 121420 (Sub-25(A)), filed June 2, 1983. Applicant: DART TRUCKING COMPANY, INC., 61 Railroad St. P.O. Box 89, Canfield, OH 4406. Representative: Michael Spurlock, 275 East State St., Columbus, OH 43215, (614) 228–8575. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI).

Note.—Applicant has concurrently filed a fitness application docketed MC–121420 Sub 25 (B) published in this same Federal Register issue.

For the following, please direct status inquiries to Team 2, (202) 275–7030.

Volume No. OP–2–276

Decided June 17, 1983.

By the Commission, Review Board Members Joyce, Krock, and Williams. (Member Krock not participating.)

MC 111662 (Sub-4), filed June 1, 1983. Applicant: LUND COACHES, INC., P.O. Box 158, Wilmington, IL 60481. Representative: Robert M. O'Donnell, 145 W. Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *passengers*, in charter and special operations, beginning and ending at points in IL, IN, MI, and WI, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 127872 (Sub-1), filed June 1, 1983. Applicant: GREENFIELD AND MONTAGUE, TRANSPORTATION AREA, 382 Deerfield St., Greenfield, MA 01301. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, 413–781–8205. Transporting *passengers*, in charter and special operations, between points in CT, DE, FL, GA, MA, ME, MD, NC, NH, NJ, NY, PA, RI, SC, VA, VT, WV, and DC.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168182, filed May 20, 1983. Applicant: HOLIDAY MOTOR COACH, INC., 4190 Greenwillow, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, 208–343–3071. Transporting (1) *passengers*, in charter and special operations, between points in the U.S., (2) *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S., (3) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., and (4) *passengers and their baggage*, in charter and special operations, between points in the U.S., for the account of the United States Government, Idaho State Government, Idaho State University, the Church of Jesus Christ of Latter Day Saints (Mormons), and Up With People, Inc., of Tucson, AZ.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168482, filed June 6, 1983. Applicant: PETER BREGA INCORPORATED, Kings Highway, P.O. Box 152, Valley Cottage, NY 10989. Representative: John N. Mecchella, 4 Laurel Rd., New City, NY 10956, (914) 638–1050. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.–Applicant seeks to provide privately funded charter and special transportation.

MC 168492, filed June 6, 1983. Applicant: J V H ENTERPRISES, INC., d.b.a. LA FRONTIERA BROKERAGE, 21203 A Hawthorne Blvd., Suite 5242, Torrance, CA 90509. Representative: James Van Hosen (same address as applicant), 213–316–1886. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 168503, filed June 7, 1983. Applicant: PETER GALLYOT, d.b.a. CHARTER ENTERPRISES, INCORPORATED, 783 Fairway Dr., Bensenville, IL 60106. Representative: Peter Gallyot (same address as applicant), 312–860–2980. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.–Applicant seeks to provide privately funded charter and special transportation.

MC 168512, filed June 6, 1983. Applicant: BEST LIMOUSINE COMPANY, INC., 8536 Ridgeway St., Philadelphia, PA 19111. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107, 215–564–3880. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.–Applicant seeks to provide privately funded charter and special transportation.

MC 168513, filed June 7, 1983. Applicant: D & U ENTERPRISES, INC., 118 Monahan Ave., Dunmore, PA 18512. Representative: Ronald N. Cobert, Suite 501, 1730 M St., NW, Washington, DC 20036, 202–296–2900. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except Ak and HI).

MC 168552, filed June 9, 1983. Applicant: JOHN A. GRAFF, d.b.a. GRAFF TRANSPORT SYSTEMS, 1905 South 1st St., Milwaukee, WI 53204. Representative: John A. Graff, (same address as applicant), 414–645–0414. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 168562, filed June 9, 1983. Applicant: H & M BUS COMPANY, INC., Rt. 1, Bonanza Circle, Piedmont, SC 29673. Representative: David D. Cantrell, Jr., P.O. Box 955, 209 East First Ave., Easley, SC 29640, (803) 859–3317. Transporting *passengers*, in charter and special operations, beginning and ending at points in Greenville, Anderson, Laurens, Pickens and Spartanburg Counties, SC, and extending to points in FL, AL, MS, LA, GA, SC, NC, TN, KY, VA, WV, OH, MD, PA, NY, NJ, DE, and DC.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168563, filed June 9, 1983. Applicant: J & J BUS COMPANY, INC., 889 Frelinghuysen Ave., Newark, NJ 07114. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–300

Decided: June 16, 1983.

By the Commission, Review Board Members Carleton, Krock and Dowell.

MC 39678 (Sub-1), filed June 6, 1983. Applicant: HARMON & REGALIA, INC., 4 Seventh St., Englewood Cliffs, NJ 07632. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, (212) 239–4610. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

Volume No. OP5–301

Decided: June 16, 1983.

By the Commission, Review Board Members Dowell, Carleton, and Joyce.

MC 162549 (Sub-2), filed June 9, 1983. Applicant: RIVER CITY FOREST PRODUCTS, INC., Indiana Hwy. 60, P.O. Box 52, Borden, IN 47106. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602, (502) 223–8244. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–302

Decided: June 16, 1983.

By the Commission, Review Board Members Joyce, Fortier, and Krock.

MC 168379, filed May 27, 1983. Applicant: SCHOOL SERVICES, INC., 2208 N. Ash, Ponca City, OK 73601. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105, (405) 424–3301. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168398, filed June 1, 1983. Applicant: TSE, P.O. Box 8129 216 Trade St., Missoula, MT 59807. Representative: Robert H. Roullier (same address as applicant), (406) 728–5510. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 168418, filed May 31, 1983. Applicant: MONTICELLO BUS SERVICE, INC., 200 South West Union St., Monticello, IL 61856. Representative: Bruce E. Pinks (same address as applicant), 217–762–5091. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168489, filed June 7, 1983. Applicant: WESTWAYS TRANSPORT, INC., P.O. Box 391, Burlington, WA 98233. Representative: Reed L. Sherer, 242 Cervantes, Lake Oswego, OR 97034, (503) 636–5220. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S.

Volume No. OP5–303

Decided: June 17, 1983.

By the Commission, Review Board Members Williams, Parker and Joyce (Member Parker not participating).

MC 27518, (Sub-1), filed June 1, 1983. Applicant: CHESHIRE TRANSPORTATION COMPANY, INC., P.O. Box 425, Lower Main St., Keene, NH 03431. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, 413–781–8205. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 145198, (Sub- 2(b)), filed June 8, 1983. Applicant: PENN TRANSFER, INC., 131 North Summit St. Akron, OH 44309. Representative: Michael Spurlock, 275 East State St. Columbus, OH 43215, (614) 228–8575. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 83–17099 Filed 6–23–83; 8:45 am]
BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only) Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and

household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 1 at (202) 275-7992

Decision Volume No. OP1-227 (N)

Decided, June 14, 1983.

By the Commission, Review Board, Members, Joyce, Carleton, and Fortier.

FF-700, filed June 6, 1983. Applicant: AMERICAN MOPAC INTERNATIONAL, INC., P.O. Box 571, Corte Madera, CA 94925. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006, (202) 833-8884. As a *freight forwarder* in connection with the transportation of *used household goods, unaccompanied baggage, and used automobiles,* between points in the U.S.

MC 120451 (Sub-4), filed June 6, 1983. Applicant: NEW ENGLAND FURNITURE EXPRESS, INC., 203 East Broadway, Gardner, MA 01440. Representative: Kenneth E. Miller (same address as applicant), (617) 632-7200. Transporting *furniture and fixtures,* (a) between points in CT, RI, and Albany, Columbia, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady and Washington Counties, NY, and (b) between points in CT, RI, and Albany, Columbia, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, and Washington Counties, NY, on the one hand, and, on the other, points in ME, MA, NH, and VT.

MC 134820 (Sub-17), filed June 3, 1983. Applicant: R.S. ALBRIGHT, INC., P.O. Box 81025, 633 S. First St., Kent, WA 98108. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101, (206) 783-2243. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI).

MC 144520 (Sub-1), filed June 6, 1983. Applicant: HANS BODY SHOP, 1720 State St., Bettendorf, IA 52722. Representative: Steven C. Schoenebaum, 1100 Carriers Bldg., 601 Locust, Des Moines, IA 50309, (515) 283-2076. Transporting *Disabled or repossessed motor vehicles and replacement motor vehicles,* between points in IA, IL, IN, MO, WI, NE and MN.

MC 155931 (Sub-1), filed June 8, 1983. Applicant: DARRELL W. BOWMAN, d.b.a. AERODYNE EXPRESS, 740 River Loop #2, Eugene, OR 97404. Representative: Darrell W. Bowman (same address as applicant), (503) 688-0660. Transporting *food and related products,* between points in AR, ID, LA, OK, OR, TX, and WA.

MC 158851 (Sub-13), filed June 7, 1983. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Ave., Wausau, WI 54401. Representative: John E. Koci (same address as applicant), (715) 675-9481. Transporting *household goods,* between points in the U.S., under continuing contract(s) with United Telecommunications, Inc., of Westwood, KS.

MC 163710 (Sub-5), filed June 8, 1983. Applicant: WESTERN LIQUID TRANSPORT, 2120 Harbor St., Pittsburg, CA 94565. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *commodities in bulk,* between points in the U.S. (except AK

and HI), under continuing contract(s) with Union Chemicals Division, Petrochemical Group, of Union Oil Company of California, of Schaumburg, IL.

MC 168450, filed June 3, 1983. Applicant: P. A. TRANSPORTATION, INC., St. B, 10365 N. Vancouver Way, Portland, OR 97217. Representative: Paula A. Chamberlain (same address as applicant), (503) 289–6841. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with P. A. Transport Brokers, Inc., of Portland, OR.

Decision Volume No. OP1–229 (N)

Decided: June 13, 1983.

By the Commission, Review Board, Members Joyce, Dowell, and Krock.

MC 57241 (Sub-3), filed May 31, 1983. Applicant: GRANT'S EXPRESS, INC., 230 Southwest Cut-Off (rear), Worcester, MA 01604. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960, (617) 535–5430. Transporting *general commodities* except classes A and B explosives, household goods and commodities in bulk), between points in MA, on the one hand, and, on the other, points in MA, NH, ME, VT, RI, CT, NY and NJ.

Note.—Approval of the authority in this proceeding is conditioned upon the prior or co-incidental cancellation of the authority in Certificate of Registration No. MC–57241.

MC 112210 (Sub-6), filed May 23, 1983. Applicant: ROBERT G. OWEN TRUCKING, INC., 49 Ohio St., Navarre, OH 44662. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting (1) *such commodities* as are dealt in or used by wholesale grocers, and (2) *pulp, paper and related products*, between those points in and east of WI, IL, MO, AR and LA.

Note.—This issuance of a certificate in this proceeding will be conditioned upon the prior or coincidental cancellation of permits No. MC-112210, Sub 2, Sub 3, Sub 4 and Sub 5 at the applicants request.

MC 127550 (Sub-12), filed May 31, 1983. Applicant: BOSCH TRUCKING COMPANY, INC., 5600 South Washington St., Bartonville, IL 61607. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward Company, of Chicago, IL.

MC 156720 (Sub-1), filed May 23, 1983. Applicant: McNEILL TRUCKING COMPANY, INC., Box 456, Calico Rock, AR 72519. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des. Moines, IA 50309, (515) 245–4300. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Yankee Express, Inc., of Perry, IA.

Decision Volume No. OP1–231

Decided: June 14, 1983.

By the Commission, The Review Board, Members Williams, Joyce and Fortier.

W 1290 (Sub-4), filed May 23, 1983. Applicant: CROSS-SOUND FERRY SERVICES, INC., 2 Ferry St., P.O. Box 33, New London, CT 06320. Representative: Eugene D. Gulland, 1201 Pennsylvania Ave., NW., P.O. Box 7566, Washington, DC 20044, (202) 662–5504. To operate as a *common carrier*, by water, by self-propelled vessels, in interstate and foreign commerce, in the transportation of *passengers, general commodities, automobiles with passengers*, and *tractors, trailers and trucks*, between New London, CT, on the one hand, and, on the other, Montauk, Long Island, NY.

MC 94201 (Sub-208), filed May 25, 1983. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Gerald D. Colvin, Jr., 601–09 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–2881. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with the Clorox Company, of Oakland, CA, and its divisions.

MC 117201 (Sub-63), filed May 25, 1983. Applicant: INTERSTATE DISTRIBUTION CO., 8311 Durango S.W., Tacoma, WA 98499. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228–3807. Transporting *general commodities* (except classes A and B explosives, household goods and commodites in bulk,) between points in the U.S. under continuing contract(s) with Pay 'N Save Corporation, of Seattle, WA.

MC 138420 (Sub-56), filed June 6, 1983. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., P.O. Box 147, Cleveland, WI 53015. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosive, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 143831 (Sub-4), filed May 24, 1983. Applicant: CLIFF VIESSMAN, INC., Clarkfield, MN 56223. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *food and related products*, between points in Lyon County, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165191, filed May 24, 1983. Applicant: CHRISTIAN SCHMIDT, Rt. 5, Box 650, Easton, MD 21601. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MD and PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 166281 (Sub-1), filed June 3, 1983. Applicant: L. W. MILLER TRANSPORTATION, INC., 1180 W. 2nd N., Logan, UT 84321. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake, UT 84111, (801) 531–1300. Transporting *buidling materials, metal products, and machinery*, between those points in the U.S. in the west of MT, WY, CO, NM and TX (except AK and HI).

MC 168491, filed June 6, 1983. Applicant: DOW TRANSPORT, INC., 308 Knickerbocker Ave., Paterson, NJ 07503. Represntative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

Decision Volume No. OP–1–232

Decided: June 14, 1983.

By the Commission, The Review Board, Members Dowell, Joyce and Fortier.

MC 7840 (Sub-47) filed May 23, 1983. Applicant: ST. LAWRENCE FREIGHTWAYS, INC., P.O. Box 211, Watertown, NY 13601. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006, (202) 828–5015. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 129410 (Sub–34), filed June 2, 1983. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102.

Representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Boncosky Brokerage and Leasing Co., of Algonquin, IL.

MC 147311 (Sub–10), filed June 2, 1983. Applicant: T & S TRANSPORTATION, INC., 7420 Ranco Rd., P.O. Box 9729, Richmond, VA 23228. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 152420 (Sub–3), filed June 6, 1983. Applicant: LAND TRANSPORT CORPORATION, 24 Sabrina Rd., Wellesley, MA 02181. Representative: James E. Mahoney, 148 State St., Boston, MA 02109, (617) 523–2660. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Newton Buying Corporation, of Framingham, MA and Eagle Can Co., of Peabody, MA.

MC 154050 (Sub–7), filed May 26, 1983. Applicant: CARRIER SYSTEMS INTERNATIONAL MOTOR FREIGHT, INC., 2000 Market St., Philadelphia, PA 19103. Representative: James W. Patterson, 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106, (215) 925–8300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 154381 (Sub–3), filed May 17, 1983. Applicant: PRETLOW BROS. TRUCKING CO., INC., 121 E. Marshall St., Richmond, VA 23219. Representative: Revardo C. Pretlow (same address as applicant), (804) 649–0875. Transporting *general commodities* (except classes A and B explosives, household goods and commodites in bulk), between points in CA and those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada, under continuing contract(s) with Military Traffic Management Command, of Washington, D.C.

MC 159460 (Sub-1), filed June 2, 1983. Applicant: AZAR NUT COMPANY, INC., 6975 Commerce, El Paso, TX 79915. Representative: Alan Mundell (same address as applicant), (915) 779–1212. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in El Paso County TX, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI and WY.

MC 167951, filed May 10, 1983. Applicant: CONSOLIDATED WHOLESALE, P.O. Box 467, Hampton, GA 30228. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949–7756. Transporting (1) *fertilizer and horticulture supplies*, (2) *food and related products*, (3) *textile mill products*, and (4) *textile waste*, between points in CA, and GA, on the one hand, and, on the other, points in AL, AR, AK, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, NE, NV, NJ, NM, NY, NC, OH, OK, OR, PA, SC, TN, TX, UT, VA, WV, WY and DC.

MC 168251, filed May 23, 1983. Applicant: BLADES FARMS, 11993 Silver Falls Hwy, SE, Aumsville, OR 97325. Representative: Roger Blades (same address as appllicant), (503) 769–2202. Transporting *lumber and wood products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Cedar Lumber, Inc., of Mill City, OR.

Decision Volume No. OP–1–233

Decided: June 15, 1983.

By the Commission, The Review Board, Members Dowell, Carleton, and Fortier.

MC 110420 (Sub-862), filed June 7, 1983. Applicant: QUALITY CARRIERS, INC., 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: Michael V. Kaney (same address as applicant), (312) 295–5700. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Kraft, Inc., of Glenview, IL.

MC 138550 (Sub-3), filed June 6, 1983. Applicant: W. SMITH CARTAGE CO. INC., 7013 Sands Road, Crystal Lake, IL 60014. Representative: James R. Madler, 120 W. Madison Street, Chicago, IL 60603, (312) 712–6525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, on the one hand, and, on the other, points in IA, IN, KY, MI, MN, MO, NE, OH, TN, AL, WI, FL and GA.

MC 142630 (Sub-8), filed June 8, 1983. Applicant: FUGAZY EXPRESS, INC., 767—3rd Avenue, New York, NY 10017. Representative: Arthur Wagner, 342 Madison Avenue, New York, NY 10173, (212) 755–9500. Over regular routes, transporting *passengers*, (1) between Stratford, CT, and New York, NY, from Stratford over access roads to CT Hwy 110, then over CT Hwy 110 to junction CT Hwy 15 (Merritt Parkway), then over CT Hwy 15 to Interstate Hwy 678 (Hutchinson River Parkway), then over Interstate Hwy 678 to Whitestone Bridge, then over Whitestone Bridge and Interstate Hwy 678 to junction Grand Central Parkway, then over Grand Central Parkway to LaGuardia Airport, then over Grand Central Parkway to Interstate Hwy 678 (Van Wyck Expressway), then over Van Wyck Expressway to John F. Kennedy International Airport, and return over the same route, (2) between New Haven, CT, and New York, NY, from New Haven over access roads to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 678 (Hutchinson River Parkway), then over Interstate Hwy 678 to Whitestone Bridge, then over Whitestone Bridge and Interstate Hwy 678 to John F. Kennedy International Airport, and return over the same route, and (3) between Hutchinson River Parkway at or near Harrison, NY, and Interstate Hwy 95 at or near Portchester, NY, over Interstate Hwy 287, serving all intermediate points in connection with routes (1) through (3) above.

Note: Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B).

MC 146050 (Sub-7), filed June 2, 1983. Applicant: ALPHA & OMEGA TRANSPORT, INC., P.O. Box 31004, Charlotte, NC 28231. Representative: Joseph L. Steinfeld, Jr., 915 Pennsylvania Bldg., 425—13th Street, N.W., Washington, DC 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 154621 (Sub-6), filed June 9, 1983. Applicant: MONROE WAREHOUSE COMPANY, INC., P.O. Box 2525, Monroe, LA 71207. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, (601) 948–8820. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with MISCO, Inc., Motor Supply Warehouse, Inc., and Poly

Processing, Inc., all of Monroe, LA, White Rock Beverage, Inc., of Whitestone, NY, and Bancroft Bag, Inc., of West Monroe, LA, and its subsidiaries.

MC 168500, filed June 6, 1983. Applicant: MCDONALD TRUCKING, INC., 344 Plainfield Avenue, Edison, NJ 08817. Representative: Joseph C. Bonk, 2100 Oak Tree Road, Edison, NJ 08820, (201) 494–1234. Transporting (1) *pet food and (2) printed matter,* between points in U.S. (except AK and HI), under continuing contract(s) with Foster Canning Co., Inc., of Farmingdale, NJ, in (1) and General Freight, Inc., of Teaneck, NJ, in (2) above.

MC 168530, filed June 8, 1983. Applicant: ROYAL MOTOR EXPRESSWAYS, INC., 1801 S. 21st Street, Parsons, KS 67357. Representative: Charles L. Williams (same address as applicant), (316) 421–3890. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AR, CO, FL, GA, IA, IL, IN, KY, KS, LA, MI, MN, MO, MS, ND, NE, NM, OH, OK, SD, TN, TX, WI, and WY. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. § 11343(e) seeking an exemption from the requirements of 49 U.S.C.§ 11343, (2) file an application under 49 U.S.C. § 11343(A), or (3) submit an affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 1, Room 2379.

Decision Volume No. OP1–235 (N)

Decided: June 13, 1983.

By the Commission, The Review Board. Members Dowell, Joyce, and Krock.

MC 2900 (Sub-468), filed May 31, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant), (904) 353–3111. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Monsanto Company, of St. Louis, MO.

MC 2960 (Sub-50), filed May 23, 1983. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, INC., P.O. Box 4362, Houston, TX 77210. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706, (409) 898–8086. Transporting *iron and steel articles,* between points in Orleans Parish, LA, on the one hand, and, on the other, points in Adams County, MS.

MC 121420 (Sub-25(B)), filed June 2, 1983. Applicant: DART TRUCKING COMPNAY, INC., 61 Railroad St., P.O. Box 89, Canfield, OH 44406. Representative: Michael Spurlock, 275 East State St., Columbus, OH 43215, (614) 228–8575. As a *broker,* of *general commodities* (except household goods), between points in the U.S.

Note.—Applicant has concurrently filed a non-fitness application docketed MC–121420 Sub 25(A) published in this same **Federal Register** issue.

MC 147321 (Sub-9), filed June 6, 1983. Applicant: BILL STARR TRUCKING, INC., 1041 S. Vista Drive, Independence, MO 64056. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105, (816) 221–1464. Transporting *paper and paper products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Bowater Southern Paper Co., of Calhoun TN.

For the following, please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–266

Decided: June 15, 1983.

By the Commission, Review Board members Carleton, Fortier, and Krock.

MC 2934 (Sub-155), filed May 31, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry, (same address as applicant), (317) 875–1142. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Arco Oil & Gas Co., of Dallas, TX.

MC 126904 (Sub-47), filed June 3, 1983. Applicant: H. C. PARRISH TRUCK SERVICE, INC., R.R. 2, P.O. BOX 264 Freeburg, IL 62243. Representative: James W. Patterson, 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106, (215) 925–8300. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 135725 (Sub-26), filed May 31, 1983. Applicant: FRY TRUCKING, INC., 507 W. 5th St., Wilton, IA 52778. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting (1) *chemicals* and related products, transportation equipment, and *such commodities* as are dealt in or used by auto parts dealers, between points in IL, IA, and MO, on the one hand, and, on the other, points in GA, IL, IA, KS, and MO, (2) *pulp, paper and related products,* and *food and related products,* between points in IA and MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (3) *food and related products,* and *chemicals and related products,* between points in GA, on the one hand, and, on the other, points in AL, FL, GA, IN, IA, LA, MS, TN, and TX.

MC 147044 (Sub-5), filed May 31, 1983. Applicant: SOUTHWEST TRAILS, INC., 6510 Cherry St., Long Beach, CA 90806. Representative: Marsha N. Honda, 1545 Wilshire Blvd., Los Angeles, CA 90017, (213) 483–4700. Transporting *petroleum and petroleum products,* between points in CA, AZ, and NV.

MC 153764 (Sub-3), filed May 31, 1983. Applicant: TURNER TRUCK SERVICE, INC., Rt. 1, Box 520K–45, Blanchard, OK 73010. Representative: William P. Parker, 4400 N. Lincoln, Suite 10, Oklahoma City, OK 73105, (405) 424–3301. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 156755 (Sub-2), filed May 23, 1983. Applicant: F.A.R. TRANSPORTATION SERVICES, INC., P.O. Box 2273, Corona, CA 91720. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211, (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157265 (Sub-1), filed May 31, 1983. Applicant: D & B TRUCKING, INC., 3333 So. Cicero Ave., Cicero, IL 60605. Representative: Philip A. Lee, 120 W. Madison Suite 618, Chicago, IL 60602, (312) 236–8225. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 159434 (Sub-2), filed June 3, 1983. Applicant: FEDERAL TRANSPORT, INC., 5658 Elmore Rd., Bartlett, TN 38134. Representative: Thomas A. Stroud, 109 Madison Ave., Memphis, TN 38103, (901) 526–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 164604, filed May 31, 1983. Applicant: FERGUSON FARMS TRANSPORTATION, P.O. Box AB, Green Forest, AR 72638. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting (1) *malt beverages,* between points in Pulaski, Sebastian

and Washington Counties, AR, on the one hand, and, on the other, points in AL, GA, IA, MN, MO, MS, NE, TN and WA and (2) *such commodities* as are dealt in or used by discount, variety and grocery stores, between points in Boone County, AR, Dale County, AL, Lancaster County, NE and Washoe County, NV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165565 (Sub-1), filed June 3, 1983. Applicant: DAVES CATTLE COMPANY, INC., Rt. 3, Box 83-B, York, SC 29745. Representative: Bruce M. Poore, P.O. Box 919, York, SC 29745, (803) 684-3131. Transporting *food and related products*, between points in Union County, NC, on the one hand, and, on the other, points in NJ, NY, IL, KY, MD, VA, AL, PA, and CA.

Volume No. OP3-268

Decided: June 16, 1983.

By the Commission, Review Board Members Krock, Williams, and Dowell.

MC 46054 (Sub-88), filed May 20, 1983. Applicant: BROWN EXPRESS, INC., P.O. Box 9244, San Antonio, TX 78204. Representative: Jack Dawson (same address as applicant), (512) 226-5391. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in TX.

Note.—Applicant intends to tack this authority to its existing regular route authority in MC-46054 Sub 83X and 85X.

MC 53965 (Sub-209), filed May 31, 1983. Applicant: GRAVES TRUCK LINE, INC., 8717 W. 110th St., Suite 700, Overland Park, KS 66210. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226, (313) 496-3534. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Ralston Purina Company and its subsidiaries, of St. Louis, MO.

MC 110525 (Sub-1328), filed May 24, 1983. Applicant: CHEMICAL LEAMON TANK LINES, INC., P.O. Box 200, Lionville, PA 19353. Representative: Edward J. Kiley, 1730 M St., NW., Washington, D.C. 20036, (202) 296-2900. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons engaged in the business of manufacturing, distributing, or dealing in bulk commodities.

MC 138104 (Sub-113), filed May 31, 1983. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731-8431. Transporting *general commodities* (except classes A and B explosives and household goods) between points in the U.S. (except AK and HI).

MC 138635 (Sub-136), filed May 27, 1983. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28053. Representative: W. C. Sutton (same address as applicant), (803) 222-4526. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Signode Corporation of Glenview, IL.

MC 146554 (Sub-5), filed May 31, 1983. Applicant: GEORGE BRINCKS, Templeton, IA 51463. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2329. Transporting *metal products* between points in IA, IL, IN, MO, NE, and OH, on the one hand, and, on the other, points in CO, ID, NE, UT, and WY.

MC 157485 (Sub-2), filed May 31, 1983. Applicant: EVES TRUCKING CO, INC., Route 724, R.D. 1, Phoenixville, PA 19460. Representative: Raymond A. Thistle, Jr., Five Cottman Court, 426 Cottman St., Jenkintown, PA 19046, (215) 576-0131. Transporting *petroleum and petroleum products*, between points in the U.S. (except AK and HI), under continuing contract(s) with West Bank Oil, Inc., of Pennsauken, NJ.

MC 168414 (Sub-1), filed May 31, 1983. Applicant: G. C. EXPRESS, INC., Suite 1800, 100 E. Broad St., Columbus, OH 43215. Representative: A. Charles Tell (same address as applicant), (614) 228-1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodites in bulk), between points in Belmont and Jefferson Counties, OH, and Hancock and Ohio Counties, WV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168475, filed June 6, 1983. Applicant: KENNETH DESKINS, P.O. Box 88, Felts Mills, NY 13638. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144. Transporting *food and related products*, between points in NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP3-271

Decided: June 16, 1983.

By the Commission, Review Board Members Williams, Dowell, and Carleton.

MC 19105 (Sub-70), filed May 31, 1983. Applicant: FORBES TRANSFER CO. INC., P.O. Box 3547, Wilson, NC 27893. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751-2441. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 107515 (Sub-1431), filed May 26, 1983. Applicant: RTC TRANSPORTATION, INC., P.O. Box 308, Forest Park, GA 30051. Representative: Robert W. Gerson, 127 Peachtree St., N.E., Suite 1400, Atlanta, GA 30043, (404) 658-8045. Transporting *General commodities* (except classes A and B explosives and household goods, and commodities in bulk), between points in the U.S. (exept AK and HI), under continuing contract(s) with Shasta Beverages, Inc., of Hayward, CA, and GTS Transportation Services, Inc., of San Jose, CA.

MC 108435 (Sub-27), filed June 2, 1983. Applicant: G & R TRANSPORT, INC., 4703 Mayflower Avenue, Wausau, WI 54401. Representative: Nancy J. Johnson, 103 East Washington Street, Box 218, Crandon, WI 54520. Transporting *granite and marble*, between points in the U.S. (except AK and HI).

MC 133655 (Sub-234), filed May 27, 1983. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Thomas E. Vanderberg, P.O. Box 2545, Green Bay, WI 54306, (414) 498-7689. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. under continuing contract(s) with Bowater Computer Forms, Inc., of Plano, TX.

MC 134534 (Sub-15), filed May 31, 1983. Applicant: BASTERRECHEA DISTRIBUTING, INC., P.O. Box 485, Gooding, ID 83350. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701, (208) 336-5955. Transporting (1) *such commodities* as are dealt in by food and grocery business houses, between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY, (2) *petroleum, natural gas and their products*, between points in OR, on the one hand, and, on the other, points in ID, MT, OR, UT, WA, and WY, and (3) *such commodities* as are dealt in or used by horticultural supply companies, between points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY.

MC 144545 (Sub-1), filed June 2, 1983. Applicant: CARRIER DEVELOPMENT CORPORATION, P.O. Box 35 Route 208, Wallkill, NY 12589. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144.

Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NY and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148334 (Sub-4), filed May 27, 1983. Applicant: BLUE MOUNTAIN TRUCKING CORPORATION, P.O. Box 86, Blue Mountain, MS 38601. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355–3543. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 163474 (Sub-1), filed May 31, 1983. Applicant: EXPEDITED AIR SERVICE, INC., 7373 South 6th Street, Oak Creek, WI 53154. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53154, (414) 273–7410. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WI, on the one hand, and, on the other, Chicago, IL, and (2) between Chicago, IL, and points in WI, on the one hand, and, on the other, points in CA.

MC 168464, filed June 6, 1983. Applicant: DENNIS GASTRICH, d.b.a. HIJENAR TRUCKING, 1190 Ten Mile Rd., New Richmond, OH 45157. Representative: James R. Stiverson, 1396 W. Fifth Ave., P.O. Box 12241, Columbus, OH 43212, (614) 481–8821. Transporting *iron and steel articles, building materials and machinery*, between points in IL, IN, KY, MD, MI, NC, OH, PA, VA and WV.

MC 168465, filed June 3, 1983. Applicant: EUGENE PLUNK, d.b.a. GENE PLUNK TRUCKING, 525 Judge Lane, Central Point, OR 97502. Representative: (same address as applicant), (503) 826–9085. Transporting *building materials*, between points in CA, OR, WA, ID, NV, UT, CO, AZ, NM, TX, OK, MO, IL, and WY.

Volume No. OP3–274

Decided: June 16, 1983.

By the Commission, Review Board Members Krock, Dowell, and Carleton.

MC 53965 (Sub-208), filed May 31, 1983. Applicant: GRAVES TRUCK LINE, INC., 8717 W. 110th St., Suite 700, Overland Park, KS 66210. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226, (313) 496–3534. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with General Mills, Inc. and its subsidiaries of Minneapolis, MN.

MC 67234 (Sub-85), filed May 27, 1983. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 So. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with ITT Courier, Terminal Systems, Inc. of Tempe, AZ.

MC 142215 (Sub-4), filed May 27, 1983. Applicant: DUKE TRANSPORTATION, INC., Rt. 3, Box 29–A, Scott, LA 70583. Representative: Colleen McDaniel, P.O. Box 3959, 213 W. Vermillion St., Suite 210, Lafayette, LA 70502, (318) 233–1940. Transporting *Mercer commodities*, between points in AL, GA, and FL.

MC 155044 (Sub-3), filed May 31, 1983. Applicant: WILKE FREIGHT LINE, INCORPORATED, 843 W. College Ave., Waukesha, WI 53186. Representative: Joseph E. Ludden, P.O. Box 1567, 2707 South Ave., La Crosse, WI 54601, (608) 788–2000. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 157494 (Sub-1), filed June 3, 1983. Applicant: L & L TRUCKING, INC., Rt. 4, Box 180, Atmore, AL 36502. Representative: Terry P. Wilson, 428 South Lawrence Street, Montgomery, AL 36104, (205) 262–2756. Transporting *chemicals and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Sunbelt Chemicals, Inc., of Atmore, AL.

MC 163815, filed May 27, 1983. Applicant: HERCULES TRUCKING, INC., 1300 Morrical Blvd., Findlay, OH 45840. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Rd., Downers Grove, IL 60515, (312) 953–0330. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hercules Tire & Rubber Co. of Findlay, OH.

MC 168185, filed May 20, 1983. Applicant: JERRY HAMMES, d.b.a. HAMMES, 6148 Kurt Blvd., Onalaska, WI 54650. Representative: Joseph E. Ludden, P.O. Box 1567, 2707 South Ave., La Crosse, WI 54601, (608) 788–2000. Transporting *food and related products*, between Dubuque, IA, and Rochelle, IL, on the one hand, and, on the other, points in WI, under continuing contract(s) with Harry C. Wenzel & Sons, Inc., of Marshfield, WI, Gateway Foods, Inc., of La Crosse, WI, Abbeyland Processing, Inc., of Abbottsford, WI, and COPPS Distributing Co., of Stevens Point, WI.

Volume No. OP3–278

Decided: June 10, 1983.

By the Commission, Review Board, Members Williams, Joyce, and Fortier.

MC 119974 (Sub-239), filed May 23, 1983. Applicant: L. C. L. TRANSIT COMPANY, a corporation, 949 Advance St., Green Bay, WI 54304. Representative: J. J. Gloeckler, P.O. Box 949, Green Bay, WI 54305, (414) 497–7400. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with CPC International, Inc., of Englewood Cliffs, NJ.

[FR Doc. 83–17100 Filed 6–23–83; 8:45 am]

BILLING CODE 7035–01–M

[OP1–FC–237]

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the

decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

MC-FC-80124.[1] By decision of June 13, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board Members Joyce, Krock, and Dowell approved the transfer to Intercontinental Express, Inc., of Lenexa, KS, of Certificate No. 78400 (Sub-Nos. 86F and 93F), issued January 27, 1981 and March 12, 1981 respectively, and a portion of Certificate No. 78400 (Sub-No. 104X), issued December 3, 1982, to Beaufort Transfer Company of Gerald, MO, authorizing transportation of: In Certificate No. MC-78400 (Sub-No. 86F) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Custom Printing Company, at or near Owensville, MO, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). In Certificate No. MC-78400 (Sub-No. 93F) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk), between Eureka, MO, on the one hand, and, on the other, points in the United States. In certificate No. MC-78400 (Sub-No. 104X) *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Gasconade County, MO, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Between points in St. Louis and Jefferson Counties, MO, on the one hand, and, on the other, points in the United States.

[FR Doc. 17085 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Notice of Proposed Exemptions

AGENCY: Interstate Commerce Commission.

[1] This notice supplements the prior notice in this proceeding, published March 21, 1983, at 48 FR 11796.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: Comments must be received within 30 days after the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood; (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: June 17, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume No. OP5F-304

U.S. Truck Lines, Inc. of Delaware—Continuance in Control Exemption—Seminole Intermodal Transport, Inc., et al.

[No. MC-F-15301]

U.S. Truck Lines, Inc., of Delaware, a non-carrier, seeks an exemption from the requirement of prior regulatory approval for its continuance in control of Be-Mac Transport Company, Inc. (No. MC-10872), Brown Express, Inc. (No. MC-46054), Central Truck Lines, Inc. (No. MC-36473), The Cleveland, Columbus & Cincinnati, Highway, Inc. (Nos. MC-3419 and 3420), Kanawha Cartage Company, (No. MC-150148), Mercury Freight Lines, Inc. (No. MC-113528), Motor Express, Inc., of Indiana (No. MC-28813), Motor Express, Inc. (NJ), (No. MC-1778), National Tank Truck Delivery, Inc. (No. MC-116132), Ohio Delivery, Inc. (No. MC-142758), Motor Express Rental Corporation (No. MC-164862), Union Transport Company (No. MC-167605), Ken-Dale Express, Inc. (No. MC-166429), and Seminole Intermodal Transport, Inc. (No. MC-168239), when the latter institutes operations as an interstate carrier. Send comments to: (1) Motor Section Room 2139, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Petitioners' representative, Earl N. Merwin 85 East Gay Street, Columbus, OH 43215. Comments should refer to No. MC-F-15301.

[FR Doc. 83-17084 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b):

1. Name and address of parent corporation or organization: West Baking Company, Inc., 3965 North Meridian Street, Indianapolis, IN 46208.

2. Wholly-owned subsidiaries and State of incorporation:

(i) Dunes Transport, Inc. (an Indiana corporation), 3965 North Meridian Street, Indianapolis, IN 46208

(ii) Chef's Baking Company, Inc. (an Ohio corporation), 3965 North Meridian Street, Indianapolis, IN 46208

1. Parent corporation and address of principal office: Amedco Inc., 726 South College, Springfield, IL 62704.

2. Wholly-owned subsidiaries which will participate in the operations and their States of incorporation:

Subsidiary and address	State of incorporation
1. Professional Securities Corp., 728 S. College, Springfield, IL.	Missouri.
2. S.P. Wright & Co., 726 S. College, Springfield, IL.	Delaware.
3. Abco Wire & Metal Products, Inc., 1833 N. Highway 77, Carrollton, TX.	Texas.
4. Acme Metal Co., Westside Highway 43, Loretto, TN.	Tennessee.
5. Amedco Contract, Inc., #5 American Industrial, Maryland Hts, MO.	Missouri.
6. Amedco International Corp., 726 S. College, Springfield, IL.	Illinois.
7. American Funeral Computer Service, 726 S. College, Springfield, IL.	Do.
8. Amject, Inc., 726 S. College, Springfield, IL.	Do.
9. Avalon Casket Co., Westside Highway 43, Loretto, TN.	Tennessee.
10. Belmont Casket Co., P.O. Box C, Crane, MO.	Missouri.
11. Belmont Casket Mfg. Co., 390 W. Spring St., Columbus, OH.	Ohio.
12. B-W Health Products, Inc., 2429 Schuetz Road, Maryland Hgts, MO.	Missouri.
13. Central States Stamping Co., 2958 E. Division, Springfield, MO.	Do.
14. Central States Rebar Co., 4724 W. Maple, Springfield, MO.	Texas.
15. Central States Stamping Co., P.O. Drawer 6250, Tulsa, OK.	Oklahoma.
16. Control Chemical Corp., 6111 15th St. East, U.S. Highway 301, Bradenton, FL.	Florida.
17. Edwards Equipment Co., 1919 N. Broadway, St. Louis, MO.	Missouri.
18. Gold Shield Caskets, Inc., P.O. Box 31, Crane, MO.	Do.
19. Hallmark Casket Co., Drawer G, George St., Marshfield, MO.	Do.
20. Health Facilities Design Assoc., Inc., #5 American Industrial, Maryland Hgts, MO.	Nebraska.
21. L. H. Kellogg Chemical Co., 311 E. 14th St., Minneapolis, MN.	Minnesota.

Subsidiary and address	State of incorporation
22. Lewis Industries, Inc., #5 Irondale Industrial Park, Irondale, AL.	Delaware.
23. Lockwoven Co., Inc., 1681 Walton Road, St. Louis, MO.	Missouri
24. Mac-O-Mo, Inc., Drawer G, George St., Marshfield, MO.	Do.
25. Marshfield Casket Co., Inc., P.O. Box 61, Marshfield, MO.	Do.
26. Medical Facilities, Inc., #5 American Industrial, Maryland Hgts, MO.	Nebraska.
27. Medical Facilities Management Corp., #5 American Industrial, Maryland Hgts, MO.	Do.
28. Medical Facilities Properties, Inc., #5 American Industrial, Maryland Hgts, MO.	Delaware.
29. Med/Fac Sales Corp., #5 American Industrial, Maryland Hgts, MO.	Missouri.
30. Med/Fac Sales—Texas #5 American Industrial, Maryland Hgts, MO.	Texas.
31. Ozark Casket Supply, Inc., P.O. Box C, Crane, MO.	Missouri
32. Preference Casket Mfg. Co., P.O. Box C, Crane, MO.	Do.
33. Royal Bond, Inc., 1919 N. Broadway, St. Louis, MO.	Do.
34. S & D Medical Products, Inc., Box 244 Airport Rd., Festus, MO.	Do.
35. Smith & Davis Mfg. Co., 1160 Central Industrial, St. Louis, MO.	Do.
36. Steel Processing & Supply Co., 1505 N. Witter Road, Pasadena, TX.	Texas.
37. York Casket Co., 700 Linden Ave., York, PA.	Delaware.
38. S & D Medical Products d.b.a. Stainless Medical Products, Inc., 9389 Dowdy Drive, San Diego, CA.	Missouri
39. Marshfield Casket Co. d.b.a. Jackson Casket Co., P.O. Box 1812, Jackson, MS.	Do.
40. Beta Corp. of St. Louis, 4328 Bridgeton Ind. Dr., St. Louis, MO.	Do.
41. Amedco Health Care Inc., #5 American Industrial, Maryland Hgts, MO.	Delaware.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17096 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Approved Exemptions.

SUMMARY: The motor carrier shown below has been granted an exemption pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: This exemption shall be effective on June 24, 1983. Petitions to reopen must be filed by July 14, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

[No. MC-F-15195]

Ryder Truck Lines, Inc.—Merger Exemption—Pacific Intermountain Express Co.; PIE Bulk Transport, Inc.—Purchase (Portion) Exemption—Pacific Intermountain Express Co.

Addresses: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209

Pleadings refer to No. MC-F-15195.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval (1) under 49 U.S.C. 11343(a)(2), the purchase by PIE Bulk Transport, Inc., of the bulk operating rights and equipment of Pacific Intermountain Express Co., and (2) under 49 U.S.C. 11343(a)(1), the merger of the remaining operating rights and property of Pacific Intermountain Express Co. into Ryder Truck Lines, Inc.

Decided: June 15, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-F-14959]

Itel Corporation—Exemption—Continues in Control—Itel Transportation Services Corp.

Addresses: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, ATTN: MCF-14959; and

(2) Petitioner's representative: Martin J. Flynn, Shea & Gardner, 1800 Massachusetts Ave., NW., Washington, D.C. 20036

Pleadings should refer to No. MC-F-14959.

Decided: June 10, 1983.

Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the prior review and approval requirements of 49 U.S.C. 11343 the continuance of control by Itel Corporation of its wholly-owned motor carrier subsidiary, Itel Transportation Services Corp. Itel Corporation also controls one Class II and 3 Class III rail carriers.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioner Andre and Gradison. Chairman Taylor concurred in the result with a separate expression.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17097 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30176]

Railroads; Southern Pacific Transportation Company—Abandonment Exemption—in Lafayette and Iberia Parishes, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Pacific Transportation Company of a 12.98-mile segment of line between Davids and Youngsville, LA subject to standard labor protection.

DATES: This exemption is effective on July 25, 1983. Petitions to stay the effectiveness of this decision must be filed July 5, 1983, and petitions for reconsideration must be filed by July 14, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30176 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, ATTN: FD-30176 Comment.

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 15, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17098 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 33]

Rail Carrier Decision; Car Service Compensation—Basic Per Diem Charges; Petition for Stay and for Enforcement of Order

Decided: June 15, 1983.

Itel Corporation (Itel) filed a petition on April 11, 1983, seeking: (1) A stay pending judicial review of our March 30, 1983, order postponing the updating of rail car rental payments; and (2)

enforcement of our May 23, 1980, order stating that railroads should update car-hire rates no less than once a year. For the reasons set forth below, we will deny the petition.

We note at the outset that, despite Itel's claim that we have changed a formal "rule," our March 30, 1983, order did not significantly change the updating procedures established in the May 23, 1980, order. Those "procedures" consisted of a single sentence: "In order to comply with the Congressional mandate of having car-hire charges reflect current costs, the U.S. railroads should update the car-hire charges in accordance with the Commission formula and with Commission approval, no less than once a year." *Car Service Compensation—Basic Per Diem Charges*, 362 I.C.C. 884, 888 (1980). This "once a year" [1] target was not promulgated with specific annual deadlines and has not been construed as requiring updates to become effective exactly 12 months apart. The first car-hire charges computed in this proceeding became effective on July 1, 1980. Subsequent updates were filed by the railroads in January and December 1981 and April 1982, respectively. Our decision postponing the current update was served on March 30, 1983, with comments due on May 2, 1983. We anticipate that by July 1, 1983—the third anniversary of the effectiveness of the initial Ex Parte No. 334 charges—we can review these comments and determine whether a full year postponement is appropriate, or whether the railroads should promptly file their third update of car-hire charges pursuant to the Ex Parte No. 334 formula. Thus, should we determine that a one-year postponement of the 1983 update is not in fact justified, that update can be performed in time to meet both our general annual update goal and the statutory command that car-hire rates be based on "current costs." At this time, therefore, we have taken no administratively final action to change any rule but have merely delayed an update of car-hire charges pending an expedited rulemaking proceeding.

Itel further asserts that our action in postponing the car-hire update was taken without notice, without providing Itel an opportunity to be heard, without a record, and without findings. We disagree with Itel's procedural complaints, but agree that our findings and reasonings require elaboration.

Our action postponing an updating of the car hire charges was taken in response to a petition filed by the Association of American Railroads (AAR) and the American Short Lines Railroads Association (ASLR) on November 19, 1982. This petition indicated that it was served by first-class mail "upon all known railroads in the United States." [2] Since the car hire payments prescribed in this proceeding are paid only by railroads to railroads, such service clearly placed every person who could be directly affected on notice that the postponement of car service updates was in issue before the Commission. We note that while Itel is not itself a railroad, four of Itel's subsidiaries are—The Green Bay & Western Railroad, the Ahnapee & Western Railroad, the McCloud River Railroad, and the Hartford & Slocomb Railroad. These subsidiaries of Itel are most directly affected by an update, or lack of update, in car hire payments, and these subsidiaries were served with the ARR/ASLR petition. Moreover, the filing of this petition could not have come as a surprise to Itel or its subsidiaries, since the AAR's proposal to postpone the update was circulated in September 1982 to all subscribers to section 5b Agreement No. 7; all four Itel rail subsidiaries are subscribers. In any event, Itel had actual notice of ARR's petition (as is evidence by its filing a comment on February 3, 1983), and Itel has not claimed otherwise.[3]

Itell claims it was denied its right to be heard in this proceeding. As noted above, however, Itel and its rail subsidiaries had actual notice of AAR's petition. Under our rules, Itel had the right to file a reply within 20 days. 49 CFR 1104.13. Itel did not do so. Nor did Itel file a request for an extension of time in which to reply. 49 CFR 1104.7(b). Given the informal nature of rulemaking, our rules nonetheless provide that, to the extent possible, we consider all comments filed before reaching a decision. 49 CFR 1110.5. We in fact considered all late filed comments received prior to the date of the decision, although we specifically discussed only the comments received sufficiently in advance to permit incorporation of a response in the decision.[4] Itel was not denied its right to be heard.

The Commission's decision to postpone effectiveness of the car-hire update was based upon a record comprised of the petition and responses—including the verified statements of four witnesses and a number of brief comments (including that of Itel). This record provided substantial evidence that the formula for car-hire costs developed in this proceeding was not performing properly under current economic conditions. Thus, the extremely volatile capital markets of the last several years, coupled with the substantial lags incorporated into our formula (a 2-year lag in obtaining the most recent data, plus an additional delay resulting from use of a 3-year average to dampen normal fluctuation in economic conditions) had resulted in a substantial increase in the capital cost component of the formula at a time when capital costs were infact declining. In addition, the rail system currently has a surplus in the national car fleet of more than 200,000 cars per day. This surplus has substantially reduced the average active car days and car miles per car, and because those averages appear in the denominator of the formula, the surplus has led to an *increase* in the car rental costs derived from our formula. Yet, a car rental formula properly responsive to market conditions normally should decline in a time of surplus (to encourage demand) and increase only in a time of shortage (to encourage efficient car utilization).[5]

Given these deficiencies in the formula clearly established on the record, it appeared that an update of car costs using the formula would not infact result in car rentals based upon the true "current costs" being experienced by railroads and car owners.

Accordingly, we instituted a proceeding proposing to postpone the annual update of the formula for one year, and to examine the possible economic disincentives that would result from application of the formula. We also noted that a general revision of the per diem formula may be in order.[6]

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[1] 49 U.S.C. 11122 does not contain an inflexible annual updating requirement, but merely requires that car rental charges be based on "current costs." Specific annual updating deadlines would have been impractical because all data required by our formula is not necessarily available at the same time each year.

[2] The same form of service was used by AAR without complaint when it filed the first two updates in this proceeding.

[3] The function of service in a rulemaking proceeding is to provide notice to all those who might be affected by possible action in that proceeding. Here, service on "all known railroads in the United States", including Itel's subsidiaries, did provide notice and was probably more likely to provide notice than would **Federal Register** publication.

[4] In any event, our prior decision, as supplemented here, adequately responds to all arguments made by Itel in its 4-page comment.

[5] A number of other problems stemming from the current formula are discussed in Ex Parte No. 346 (Sub-No. 6), *Exemption from Regulation—Boxcar Traffic*, 367 I.C.C. 424 (1983), slip op. served May 2, 1983.

[6] Itel conceded in its comments filed February 3, 1983, that "a period of car surplus could require that some consideration be given to making adjustments in the formula." Comments at 3.

The second aspect of our March 30, 1983, order was to postpone effectiveness of the annual update during the pendency of this proceeding. This action was necessary for several reasons.

First, failure to postpone the annual update would have imposed substantial costs on the affected railroads that would not have been recovered even if the update were subsequently rescinded. Given the complexity of the formula and of the car rental figures there are substantial administrative costs that would be incurred by all railroads in adjusting their accounting systems.

Second, the increase that would have resulted from the update was very large (25%) and would have substantially affected the profitability of different carriers and of different types of traffic, perhaps forcing carriers to take various rate actions that would affect shippers.[7] This would have been particularly inappropriate given the strong showing that the current per diem update from the formula gave economically improper results.

Third, the extent of harm a postponement would cause per diem creditors is limited. No such creditors could claim substantial reliance upon the fact that the formula would never be changed or that updates would always be made on an annual basis. Both our original decision promulgating the formula, *Car Service Compensation—Basic Per Diem Charges*, 358 I.C.C. 715, 794 (1977), and our final decision implementing the formula, 362 I.C.C. 884, 889 (1980), specifically held the proceeding open "for revisions and modifications where deemed justified in the formula and procedures." Moreover, the subsequent decision in Ex Parte No. 334 (Sub-No.4), *Order Granting Railroads Flexibility in Setting Per Diem Levels*, served August 16, 1980, specifically permitted per diem rates to decline below those set in the formula. Thus, in our March 30, 1983, order we recognized that the issue of postponement of the annual update was "one of procedure rather than substance," to determine "whether the increase should be avoided by suspension or postponement as requested by petitioners, or allowed to become effective so that each railroad may reduce its car hire charges independently."

[7] Conrail, the major per diem debtor in the entire rail system, stated in its comments that it could be forced to use its Staggers Act rate freedoms to surcharge rates if the per diem update were not postponed. CR Comments (verified statement of B. D. Poff, pp. 11, 12).

There was and remains good cause to postpone effectiveness of the annual update pending receipt of comments on our proposal to suspend the update for one year. 5 U.S.C. 553 (b)(B) and (d)(3).

We conclude that postponement of the railroads' annual update of car-hire charges was both lawful and required by the circumstances shown on the record. Itel's petition for Stay and for Enforcement of our May 23, 1980, order will be denied.[8]

This action will not have a significant effect on the quality of the human evironment, or the conservation of energy resources.

It Is Ordered

1. The petition is denied.

2. This decision is effective on June 23, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17087 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30191]

Rail Carriers; Burlington Northern Railroad Company, Trackage Rights Exemption, Between Ortonville and Buffalo Lake, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 *et seq.* the acquisition by the Burlington Northern Railroad Company of trackage rights over a line of railroad between Ortonville and Buffalo Lake, MN, owned by the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, subject to labor protective conditions.

DATES: This exemption will be effective on June 24, 1983. Petitions to reopen must be filed by July 14, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30191 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Douglas J. Babb, Burlington Northern Railroad Company, 176 East Fifth Street, St. Paul, MN 55101.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystem, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metroplitan area) or toll free (800) 424-5403.

Decided: June 15, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17095 Filed 6-23-83; 8:45 am]

BILLING CODE 1035-01-M

[Docket No. 30129]

Rail Carriers Itel Rail Corporation, Exemption, Control of Itel Transportation Services Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.* the acquisition by Itel Rail Corporation of control of Itel Transportation Services Corp., subject to conditions for protection of employees of affiliated rail carriers.

DATES: This exemption is effective on June 24, 1983. Petitions to reopen must be filed by July 14, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30129 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, ATTN: FD-30129 Comment.

(2) Petitioner's representative: Martin J. Flynn, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in

[8] On May 2, 1983, parties to this proceeding filed comments on our proposal to postpone the formula update for one year. Although we are still analyzing these comments, our preliminary review here and in Ex Parte No. 346 (Sub-No. 8), *supra*, reveals that the defects of the Ex Parte 334 per diem system cannot be resolved by focusing only on the postponement of updates, and that we must reopen the entire Ex Parte 334 update formula for modification. Accordingly, we will soon issue a notice of proposed rulemaking (or other appropriate document) to consider how our Ex Parte No. 334 formula and procedures would be changed to allow per diem charges to better reflect market conditions.

the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: June 10, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman concurred in the result with a separate expression.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-17081 Filed 6-23-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-14,194]

Sea's Manufacturing Co., Brady, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 27, 1982 in response to a petition which was filed on December 20, 1982 on behalf of workers at Sea's Manufacturing Company, Brady, Texas. The workers produced ladies' skirts primarily, and also produced ladies' shorts, ladies' pants, and men's surfing shorts.

Sea's Manufacturing Company was founded on November 9, 1981 and closed permanently on June 13, 1982.

Monthly sales and monthly employment increased in most of the months when Sea's was in business. There were no layoffs of workers until the permanent closure of Sea's on June 13, 1982. New hires of production employees occurred each month from November 1981 through May 1982.

Due to the short term of operation of Sea's Manufacturing Company, it is not possible to statistically measure year to year trends for sales or production at Sea's or to determine the impact of imports on this firm. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this June 15, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-17114 Filed 6-23-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-13,978]

Mountain States Mineral Enterprises, Inc., Tucson, Arizona; Negative Determination on Reconsideration

On May 20, 1983, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Mountain States Mineral Enterprises, Incorporated, Tucson, Arizona. This determination was published in the **Federal Register** on May 31, 1983 (48 FR 24226).

The company in its application for reconsideration claims that the workers produce an article. In support of this claim the company asserts that about half of their 1982 sales resulted from the manufacture of fabricating machinery for beneficiating ore, i.e., heavy duty separators and sink/float vessels.

The Department's denial was based on the fact that the workers of the subject firm did not produce an article within the meaning of Section 222(3) of the Act. On reconsideration, the Department found that the subject firm produced mining machinery for beneficiating ore. In 1982, about half of the Mountain States Mineral Enterprises', sales came from such production. Worker separations began in February 1982.

The Department found further, however, that U.S. imports of mineral beneficiation machines decreased in 1982 compared to 1981 and in 1981 compared to 1980.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Mountain States Mineral Enterprises, Incorporated, Tucson, Arizona.

Signed at Washington, D.C., this June 15, 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 83-17115 Filed 6-23-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,833, TA-W-13,834 and TA-W-13,896]

U.S. Steel Mining Co., Inc., Decota Mining District, Chesapeake, West Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on April 22, 1983 to workers of U.S. Steel Mining Company, Inc., under petition numbers TA-W-13,833, TA-W-13,834, and TA-W-13,896. The Notice of Certification were published in the **Federal Register** on May 3, 1983 (48 FR 19960).

Based on new information furnished by the U.S. Steel Mining Company, Decota Mining District, in Chesapeake, West Virginia, the Office of Trade Adjustment Assistance on its own motion is revising the certification to eliminate the designation of Divisions of the Decota Mining District which were incorrectly identified—specifically the Crimson Division (TA-W-13,834) and the Eagle Division (TA-W-13,896). The intent of the Department of Labor was to cover all workers of the Decota Mining District who became totally or partially separated from employment on or after August 31, 1982.

Accordingly, this certification will cover all workers of the Decota Mining District and will be identified by three numbers in the original certification—TA-W-13,833, TA-W-13,834 and TA-W-13,896, absent Division identification.

The certification, therefore, is amended to read: "All workers of U.S. Steel Mining Company, Inc., Decota Mining District, who became totally or partially separated from employment on or after August 31, 1982, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of June 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 83-17116 Filed 6-23-83; 8:45 am]

BILLING CODE 4510-30-M

Employment Service Reimbursable Grants; Fiscal Year 1984 Preapplications for Federal Assistance and Solicitation for Grant Application

Correction

In FR Doc. 83-16902 beginning on page 28575 in the issue for Wednesday, June 22, 1983, make the following correction on that page: In the middle column, the paragraph designated "1.", the fourteenth line, the figure "$121,800,000" should read "$12,800,000".

BILLING CODE 1505-01-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for "The Digest"

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for *The Digest* for fiscal year 1984.

SUMMARY: The purpose of this notice is to inform Federal agencies that the Merit Systems Protection Board publication, entitled *The Digest*, will be available for fiscal year 1984 on riders to the Government Printing Office. Departments and agencies may order this monthly publication by riding the Merit Systems Protection Board's printing requisition #4–00040.

DATE: Agency FY 84 requisitions (Standard Form 1) should be submitted to the Government Printing Office, Requisitions Section, Room 836, Washington, D.C. 20401, no later than September 1, 1983, through the agency's Washington, D.C. headquarters office authorized to procure printing for the agency. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT: Karen S. Henkel, Information Services Division, Office of the Secretary, Merit Systems Protection Board, Suite 1404, 5205 Leesburg Pike, Falls Church, Virginia 22041, 703/756–6388.

Dated: June 16, 1983.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 83-17077 Filed 6-23-83; 8:45 am]

BILLING CODE 7400-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22981; (70–6791)]

Consolidated Natural Gas Co. et al.; Proposed Transfer of Gas Leases Between Nonutility Subsidiaries

June 20, 1983.

In the matter of Consolidated Natural Gas Co., 100 Broadway, New York, New York 10005; CNG Development Co., One Park Ridge Center, Pittsburgh, Pennsylvania 15244; CNG Producing Co., 445 West Main Street, Clarksburg, West Virginia 26301.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its nonutility subsidiaries, CNG Development Company ("CNGD") and CNG Producing Company ("Producing"), have filed with this Commission a post-effective amendment to an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, and 50(a)(3) promulgated thereunder.

By prior order in this proceeding (HCAR No. 22845, February 7, 1983), the Commission authorized Consolidated to finance the operations of CNGD, which will engage in natural gas and oil exploration in several Appalachian states, through the purchase of up to 200,000 shares of CNGD's common stock ($100 par value) for aggregate consideration not to exceed $20 million. As of March 31, 1983, Consolidated had purchased 12,000 shares for an aggregate amount of $1,200,000. Said order of February 7, 1983, reserved jurisdiction over the acquisition by CNGD of gas exploration leases from affiliated companies.

By post-effective amendment, applicants-declarants now propose the transfer to CNGD of all Appalachian gas leases currently held by Producing. This transaction would be effected in two steps. First, Producing proposes to transfer to Consolidated, as a dividend-in-kind, all of its rights, titles, and interests in Appalachian leasehold properties, based on the net book cost thereof as of the end of the month immediately preceding the date of the transaction. As of March 31, 1983, such net book cost totaled $7,785,896. Simultaneous with the issuance of the dividend, Consolidated will transfer all such property to CNGD in consideration for shares of CNGD common stock, $100 par value. CNGD will issue shares in multiples of ten so that, by way of example, as of March 31, 1983, 77,860 shares would have been issued in exchange for the property. Consolidated may also transfer a nominal amount of cash, as an addition to the working capital of CNGD, to the extent the total par value of CNGD common stock, issued in exchange for the transferred property, exceeds the exact net book value of the properties.

The application-declaration, as amended by said post-effective amendment and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 14, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-17064 Filed 6-23-83; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension

Part 257

No. 270–261

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of clearance Part 257 of the Public Utility Holding Company Act of 1935, which requires registered holding company systems to preserve records for specified periods.

Submit comments to OMB Desk Officer: Mr. Robert Veeder, (202) 395–4814, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 17, 1983.

[FR Doc. 83-17065 Filed 6-23-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19888; (SR-MSTC-83-2)]

Midwest Securities Trust Company ("MSTC") Order Approving Proposed Rule Change

June 20, 1983.

Introduction

On March 8, 1983, MSTC filed a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(2), and Rule 19b–4 thereunder. The proposed rule change would permit MSTC to expand its Municipal Bond Processing System (the "System") to provide depository services for eligible municipal securities

issues in bearer form. Notice of the proposed rule change together with the terms of substance of the proposed rule change were given by publication of a Commission Release (Securities Exchange Act Release No. 19646, April 1, 1983) and by publication in the **Federal Register** (48 FR 15206 [April 7, 1983]). The Commission solicited but did not receive any comments.

Description

The proposed rule change authorizes the expansion of MSTC's Municipal Bond Processing System, ultimately, to provide participants with a broad range of depository services for bearer form municipal securities.[1] These services will be implemented in successive stages. In its initial stage (the only one implemented by the rule change approved in this Order), the System permits participants to deposit bearer form municipal securities for safekeeping, deliver those securities to other participants by book-entry through MSTC and withdraw certificates upon request. In addition, the initial stage includes collection of interst and maturity payments from issuers of bearer form municipal securities (or from their paying agents) and disbursement of the funds, by appropriate credit, through MSTC.

Later stages of the System will provide participants with other services, which will not be implemented pursuant to this Order. These later stage services include efficient depository processing of calls and redemptions of municipal securities, automatic billing, the capability to effect book-entry pledges through MSTC, the capability to deposit and withdraw securities at various regional depository satellites and the capability to make deliveries to non-MSTC participants through regional clearing agents.

In addition, the proposed rule change permits MSTC to declare depository-eligible municipal securities issues in bearer form, to the maximum extent consistent with MSTC's operational capabilities. The proposed rule change, by amending MSTC Rule 2, Section 2, provides that MSTC may not accept for deposit a bearer form municipal securities issue if it has a face value of less than $1,000 or if it is in default on interest payments. Ordinarily, MSTC participants need only request that an issue be made depository-eligible for MSTC to accept that issue for deposit and related services.

[1] Previously, the Municipal Bond Processing System provided participants with depository services only for registered form municipal securities issues.

Discussion

1. *Section 17A(b)(3)(F)—Safeguarding Funds and Securities in MSTC's Custody.* MSTC believes the proposed rule change is consistent with the Act and, in particular, with Section 17A(b)(3)(F) of the Act, which requires registered clearing agencies to safeguard the funds and securities within their custody or control. As a general matter, the Municipal Bond Processing System safeguards the securities in MSTC's control by: (1) using financial institutions with appropriate and responsible facilities and staff to safekeep municipal securities; (2) establishing regional networks for physical handling of securities certificates; [2] (3) providing for book-entry securities transfers among MSTC participants; and (4) assuring that custodians will not refuse to deliver participants' fully-paid-for securities.

More specifically, the System contains serveral regional custodians [3] that, on behalf of MSTC, accept for deposit eligible municipal securities in bearer form collect and receive the interest principal and any other payments on such deposited securities and hold, release or otherwise dispose of such deposited securities or their proceeds according to participants' instructions conveyed through MSTC. In addition, MSTC contemplates later using several regional depository satellites in the System [4] that, on behalf of MSTC, will receive eligible municipal securities from participants and transmit them to regional custodians for safekeeping and receive deposited securities from regional custodians for release to participants. MSTC further contemplates the use of clearing agents—organizations through which MSTC participants will be able to deliver municipal securities certificates to non-MSTC participants on a "free" or "versus payment" basis.

Together, the regional custodians, depository satellites and clearing agents will comprise a network that, in connection with depository-related services, should assure safety, promptness and accurancy in storage, deliveries and withdrawals of municipal securities. The MSTC System, for example, is designed to use as regional custodians and depository satellites only those banks or trust companies that have well established security procedures and vault facilities for the safekeeping of bearer form municipal securities. Furthermore, MSTC intends to use only those banks and trust companies with extensive experience processing payments related to such securities, particularly interest payments made in exchange for bearer certificate coupons. Special vault facilities and safekeeping experience are particularly significant with regard to bearer form securities certificates in view of their ready negotiability. In addition, the use of banks and trust companies within a particular geographic region should greatly reduce the time and distance involved in transporting such securities and should curtail the opportunity for securities theft. Finally, the Municipal Bond Processing System provides for book-entry deliveries or bearer form municipal securities between MSTC participants, which should reduce the number of physical deliveries of such securities and thereby reduce the risk of loss attendant to transporting bearer form securities.

Significantly, MSTC's expanded System includes arrangements designed to assure that regional custodians and depository satellities will not refuse to deliver participants' fully-paid-for securities when so instructed by MSTC. Pursuant to rule 8c–1 of the Act,[5] MSTC's Custodian Agreement expressly provides that eligible securities within the custody or control of the regional custodian shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the custodian or any person claiming through the custodian and that the custodian shall not have any legal or equitable right, title or interest in or to

[2] Although the MSTC System currently does not have in place the various regional networks, the benefits of such networks are so intertwined with those aspects of the System that are to be implemented pursuant to this Order and are such an integral part of the System as it is intended to operate ultimately, that it seems appropriate to discuss such later developments in this Order.

[3] Pursuant to the MSTC Custodian Agreement, a regional custodian must be a bank or trust company which is subject to supervision or regulation pursuant to state or federal banking laws or a clearing corporation, as defined in Article 8 of the Uniform Commercial Code of the State of Illinois.

[4] Pursuant to the MSTC Custodian Agreement, a depository satellite must also be a bank or trust company subject to supervision or regulation pursuant to state or federal banking laws or a clearing corporation, as defined in Article 8 of the Uniform Commercial Code of the State of Illinois.

[5] 17 CFR 240.8c–1 (1982). To further assure the safeguarding of bearer form securities, MSTC requires the regional custodians and depository satellites, by contract, to agree to bear the risk of loss and liability for any and all damages incurred by MSTC incident to any of the custodians' or satellites' acts or omissions concerning the securities that are the subject matter of the contract. In addition, MSTC requires the regional custodians and depository satellites, by contract, to permit MSTC's representatives and MSTC's external auditors to discuss and review the adequacy of the custodians' and satellites' controls and procedures.

eligible securities within its custody or control.

2. Section 17A(b)(3)(A)—*Prompt and Accurate Clearance and Settlement.* The Commission believes that the proposed rule change also is consistent with Section 17A(b)(3)(A) of the Act in facilitating the development of a national system for the prompt and accurate clearance and settlement of securities transactions. In this connection, the rule change lays the groundwork for later rule changes concerning automated comparison, clearance and book-entry settlement of municipal securities transactions.[6]

a. *The National System for the Clearance and Settlement of Municipal Securities Transactions.* Traditionally, the municipal securities industry processed securities transactions outside the clearing agency environment. The development of automated clearance and settlement systems for municipal bonds, in bearer and registered form, has been frustrated to a great extent by the overwhelming predominance of bearer form securities issues that have no active secondary trading market. Approximately 97 percent of the more than 54,000 municipal securities issues are in bearer form. Because these issues are negotiable by delivery, because they do not depend on record ownership systems for interest payments, and because they do not require the various services of transfer agents, many of the services offered by registered securities depositories do not match the traditional needs and customs of municipal securities dealers and municipal securities investors. Also, because of the absence of significant secondary market activity in many municipal securities issues, clearing agency services have historically been of modest value to municipal securities dealers.

As a result, municipal securities dealers and municipal securities custodians traditionally have had little incentive to immobilize their bearer from certificates in a centralized depository. Moreover, the utility of a centralized depository facility for bearer form instruments is affected by time and distance considerations.[7] Indeed, if only a limited number of the securities issues are depository-eligible, a financial institution may choose not to immobilize any such securities certificates because it would still be required to maintain, at significant expense, its own vault facility for ineligible securities issues.

Recent federal tax law changes that require, after July 1, 1983, the issuance of tax exempt municipal securities in registered, rather than bearer, form, however, will have profound implications for the processing of municipal securities transactions.[8] Following July 1, 1983, issuers will have to provide investors with the full range of transfer agent services during the life of the issue, unless they can arrange for immobilization of the entire issue consistent with state law. Many municipal securities issuers, particularly the larger regional issuers, will engage the services of local banks or professional transfer agents, although some issuers are likely to provide transfer services in-house. Particularly in view of the significant prospective increase in transfer activity and the lack of issuer, dealer and investor experience with registered form securities processing, prompt and effective transfer agent performance in processing registered form municipal securities will be critical. Moreover, the proliferation of registered form municipal securities will create important incentives for municipal securities brokers and dealers to immobilize certificates in depository facilities.[9]

b. *An Assessment of MSTC's Municipal Bond Processing System Under TEFRA.* MSTC's securities depository facilities provide participants with services for registered form municipal securities issues, particularly the ability to satisfy deliver obligations by book-entry movements. The Commission anticipates, therefore, that depository participants and other municipal securities dealers will obtain various significant and increasing cost savings through participation in registered clearing agencies and use of clearing agency facilities, including those provided by MSTC and DTC. These savings include less frequent fails-to-settle and enhanced customer satisfaction as well as reduced financing costs and net capital charges.

Although, in response to TEFRA, many municipal securities will be issued in registered form, municipal securities issued in bearer form prior to July 1, 1983, will continue to be traded. Thus, in the absence of easily accessible depository facilities for a full range of bearer form municipal securities issues, the incentives for municipal securities dealers to participate in registered securities depositories and clearing corporations will remain limited. Significantly, because MSTC has virtually unlimited eligibility with respect to bearer form municipal securities [10] and contemplates extensive regional vault facilities for participant deposits, MSTC participants may well decide to avoid storage and processing duplication by depositing with MSTC the vast majority of their current inventory.

Important cost savings should accrue to these depository participants as a result of more accurate and efficient processing within the National Clearance and Settlement System. The prompt and accurate clearance and settlement of transactions in bearer form municipal securities issues should be promoted by MSTC's planned network or regional custodians and depository statellites. Because that network seems reasonably designed to enable timely deliveries of these types of securities within each region, MSTC's System should facilitate prompt settlement. In turn, such efficiency should help reduce, if not eliminate, the major obstacles to routine use of clearing agency facilities by MSTC municipal securities dealer participants.

Conclusion

The Commission finds, therefore, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and, in particular, the requirements of Section 17A of the Act.

It is therefore, ordered, pursuant to Section 19(b)(2) of the Act, that the proposed change be, and hereby is, approved.

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[6] The Municipal Securities Rulemaking Board ("MSRB") recently published for comment a draft proposed rule change that would require certain broker-dealers and their customers to use the facilities of a registered securities depository for the confirmation, affirmation and settlement of "COD/DVP" transactions in depository-eligible municipal securities. By expanding the number of municipal securities issues which are depository-eligible, MSTC's rule change provides an operational framework for the MSRB rules, which should stimulate the immobilization of municipal securities issues.

[7] The Depository Trust Company ("DTC") is the only other registered securities depository to provide depository services for bearer form municipal securities issues. DTC, however, provides a centralized vault facility rather than a network of regional depository facilities.

[8] *See,* The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982).

[9] Poor transfer agent performance can result in significant expense to broker-dealers from financing costs and increased net capital charges form fails-to-deliver and can generate delays, inconvenience and dissatisfaction for customers.

[10] In contrast, DTC,s Program has stricter issue—eligibilty standards than MSTC's Program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-17063 Filed 6-23-83; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 20, 1983.

In the Matter of Applications of the MIDWEST STOCK EXCHANGE, INC. For Unlisted Trading Privileges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

FN Financial Corporation
Common Stock, $.10 Par Value (File No. 7-6744)
Helig-Meyers Company
Common Stock, $2 Par Value (File No. 7-6745)
Pulte Home Corporation
Common Stock, $1 Par Value (File No. 7-6746)
Hecla Mining Company (Delaware)
Common Stock, $.25 Par Value (File No. 7-6747)
NAFCO Financial Group, Inc. (Holding Company)
Common Stock, $.01 Par Value (File No. 7-6748)
City Investing Company
$2.875 Convertible Exchangeable Cumulative Preferred, Series E (File No. 7-6749)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 12, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-17061 Filed 6-23-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19884; File No. SR-NASD-83-13]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc.; Fees for NASDAQ/NMS Market Maker Information

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1983, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items II, III, and IV below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Background of the Proposed Rule Change

Over-the-counter ("OTC") securities designated as National Market System ("NMS") Securities,[1] pursuant to Rule 11Aa2-1 ("Rule") under the Act,[2] are "reported securities" and subject to, among other things, the quotation reporting and dissemination requirements of Rule 11Ac1-1 ("Quote Rule") under the Act.[3]

Prior to the effectiveness of the first NMS designations, the NASD had applied to the Commission for an exemption from paragraph (b)(1) of the Quote Rule which requires the NASD to make available to vendors of securities information the bid, ask, and quotation size of each market maker in an NMS Security ("NMS Service").[4] In its exemption request, the NASD stated that such information was equivalent to the quotation montage contained in NASDAQ Level 2 and Level 3 services[5] and had been offered to vendors in the past.[6] The NASD continued that while no vendor had requested access to this information, the NASD would renew its offer to make the data available. The NASD then requested an exemption from paragraph (b)(1) of the Quote Rule with respect to NMS Securities until such time as a vendor had requested this data, a suitable agreement with the vendor was negotiated, appropriate changes were established and the NASDAQ system was modified accordingly.

In response to the Commission's solicitation of comment on the NASD's exemption request, Institutional Networks Corporation ("Instinet"), a registered broker-dealer which operates both information services and a computerized stock execution system for institutional investors, stated that it had indicated to the NASD an interest in the NMS Service, and had entered into negotiations with the NASD regarding the price and terms of access to that Service. Accordingly, in order to provide the NASD, Instinet and other interested vendors with an opportunity to satisfy the necessary conditions relating to vendor access to the NMS Service, the Commission granted the NASD an exemption from having to furnish the Service until October 1, 1982, or until such time as a suitable agreement with Instinet or any other interested vendor was negotiated, appropriate charges were established and the NASDAQ system was modified to permit distribution of the information to vendors.[7] Thereafter, extensive negotiations between the NASD and Instinet resulted in limited progress toward the parties reaching agreement on price as well as certain key terms necessary for Instinet's access to the NMS Service. Although the Commission noted its serious concern regarding the protracted negotiations, the Commission indicated that it would monitor closely

[1] As of June 1, 1983, 283 of the most actively-traded OTC securities have been designated as NMS Securities.

[2] For further information concerning the Rule, *see* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992; and Securities Exchange Act Release No. 19797 (May 20, 1983), 48 FR 24823.

[3] NMS Securities also are subject to the Commission's Vendor Display Rule, Rule 11Ac1-2, and Transaction Reporting Rule, Rule 11Aa3-1. *See paragraph (o)(6) of the Quote Rule.*

[4] *See* Securities Exchange Act Release No. 18398 (January 7, 1983), 47 FR 2225.

[5] NASDAQ Level 2 service provides the full NASDAQ quotation data stream to subscribers, which includes every quotation, with size, and identifiers of the market makers disseminating quotations in each NASDAQ security (Level 3 service is essentially the same as Level 2 service but permits market makers to input quotations). NASDAQ Level 1 service only provides the best bid and ask quotations in each NASDAQ security and does not identify individual market makers.

[6] Although the NASD is the exclusive processor of the NMS Securities information in that it collects this information and prepares it for distribution, the NASD faces potential competition in the market for providing the end-user with an inquiry unit, formatted data and communications linkage ("Terminal Service"). In this respect, while some vendors, other than the NASD, provide Terminal Service for NASDAQ Level 1 service, at present, only the NASD provides Terminal Service for NASDAQ Level 2 and Level 3 services.

[7] *See* Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13285.

the parties' future negotiations; and thus, the Commission granted the NASD an extension of its Quote Rule exemption until March 1, 1983,[8] and again until June 30, 1983.[9]

To date, the NASD and Instinet have not entered into any contractual arrangement necessary for Instinet to begin receiving the NMS Service. The NASD, however, has implemented the requisite technical modifications so that vendors such as Instinet could be furnished the information once an agreement is reached. Having reached an impasse in the negotiations with Instinet, the NASD's present proposed rule change reflects the terms of the NASD's last offer in those negotiations.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Schedule D of the NASD's By-Laws to provide fees to vendors and subscribers of NASDAQ/NMS Market Maker Information. The rate for subscribers will be dependent upon the percentage NASDAQ/NMS trading volume bears to total NASDAQ volume and will range from $37.50 per month to $150 per month. Vendors will pay a total facilities charge not to exceed $3,200 per month. Since this information is included in NASDAQ Level 2/3 Service, no additional charge will be assessed subscribers of these Services.

III. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change establishes fees for vendors and subscribers of NASDAQ/National Market System Market Maker Information. This Service is being supplied pursuant to the requirements of Commission Rule 11Ac1-1 and is consistent with Section 15A(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Subscribers to this Service will receive a portion of the information provided NASDAQ Level 2/3 subscribers. NASDAQ Level 2/3 subscribers are charged a rate of $150 per month plus $.01 per quotation request. Moreover, NASDAQ Level 2/3 subscribers must also pay the terminal charges specified in Schedule D. The rate submitted herein is discounted to reflect the lesser relative worth of the information made available under this new Service. In addition, there will be no charge by the Association for quotation requests or terminal equipment since such will be provided subscribers by the vendors. Thus, this new Service may provide an economic alternative to those subscribers who are served by a vendor offering this Service and desire only NASDAQ/NMS quotation information. Since NASDAQ Level 2/3 Service will continue to be available to any person in the 48 contiguous states who desires it at rates which have already been approved by the Commission, the Association does not foresee a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited or received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

The NASD's proposed rule change raises a number of issues regarding the dissemination of market information. First, the proposed fees raise questions regarding the appropriate prices and terms that an exclusive processor of securities data can impose on vendors that may compete with the exclusive processor in the Terminal Service market. In this regard, Section 11A(c) of the Act provides that the Commission may, by rule, assure that "all securities information processors may, for purposes of distribution and publication, obtain [securities data made available by an exclusive processor] on fair and reasonable terms."[10]

Second, the proposed fees for subscribers must be examined to see whether such fees are fair and reasonable and are consistent with the Congressional mandate in Section 11A(a)(1) of the Act to assure "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." Moreover, the Commission must examine whether, with respect to exchange members, brokers and dealers and securities information processors, the proposed fee schedule (both the vendor fee and the subscriber fee) are not "unreasonable discriminatory."[11]

Finally, the proposed NASD rule raises significant questions with respect to the relationship between the proposed fees for NMS Service and existing fees charged by the NASD for Level 2 and Level 3 services.[12]

In order to evaluate the issues raised by the NASD's proposed rule change, the Commission requests that commentators, in addition to any general comments concerning the rule change, address whether such rule change is consistent with the Act, and specifically respond to the following questions:

1. Would the proposed fee structure provide vendors' subscribers access to NMS Securities quotation information in a non-discriminatory manner at a cost which would not impose an unnecessary or inappropriate burden on competition?

2. Is it appropriate to base the subscriber charge for the NMS Service on the NASD's NASDAQ Level 2/3 information charge?

[8] *See* Securities Exchange Act Release No. 19118 (October 12, 1982), 47 FR 46793.

[9] *See* Securities Exchange Act Release No. 19564 (March 3, 1983), 48 FR 10175. The Commission granted the most recent extension, however, for the sole purpose of allowing the NASD to complete its technical perparations to make the information available. In this regard, the Commission stated that, in light of the previous extensions, it could not foresee any circumstances that would justify a further extension of the exemption.

[10] *See* Section 11A(c)(1)(C) of the Act.

[11] *See* Section 11A(c)(1)(D) of the Act.

[12] *See, e.g.*, Section 15A(b)(5) of the Act.

3. Should the charges for information only services such as NASDAQ Level 2 service or Instinet's proposed NMS Service be based on charges for NASDAQ Level 3 service which permits registered market makers to disseminate quotation information?

4. Assuming it is appropriate to use the Level 2/3 charge as the basis for calculating the NMS Service charge, is the Level 2/3 charge reasonably related to the NASD's costs of providing the Level 2/3 service?

5. Is the proposed formula for calculating the fees (based on the ratio NMS share and dollar volume bears to NASDAQ volume) appropriate?

6. Assuming the formula itself is appropriate, in light of the fact that "higher volume results when the NMS reporting rule is followed than when the NASDAQ rule is followed," [13] is it appropriate to calculate the NMS Service charge based on a percentage of NASDAQ volume without some downward adjustment for NMS reported volume? In addition, what, if any, is the justification for rounding the volume percentage to the next highest quartile?

7. Are the charges reasonably related to the NASD's cost of providing the NMS Service to vendors? Should the charges be based on the NASD's cost of providing the information? If the charges should be cost based, does the Commission have sufficient information to determine whether the fees are cost justified?

8. What is an appropriate rate of return that the NASD may collect as a result of providing the NMS Service?

9. Could vendors and their subscribers reasonably be expected to purchase this Service under the proposed terms and fees?

10. What is the elasticity of subscriber demand for this information (to what extent would subscribers purchase this information if the fees were reduced slightly/substantially)?

11. At the proposed rates, would subscribers rather purchase the NMS Service or NASDAQ Level 2 service from the NASD for $150.00?

12. Would the present subscribers to the NASD's Level 2 service reduce or discontinue Terminal Service with the NASD in the event that other vendors such as Instinet begin providing Terminal Service for the NMS Service?

13. Is it appropriate for the NASD to determine the precise level of charges that a vendor's customers (the end-users) should pay to the NASD for the NMS Service?

14. Should commentators believe that it is proper for the NASD to set the charges discussed in question 13, above, is it still appropriate for the NASD to bill the vendor's customers directly for these charges, or should the vendor be permitted to pay the NASD the subscriber charges (and then presumably pass these charges onto the end-user as part of the vendor's Terminal Service charge)?

15. The proposed rule change does not provide for multiple interrogation unit discounts; should the NASD provide for such discounts [similar to those that presently are provided for securities information in listed stocks by the Consolidated Quotation Association ("CQA" [14])?

16. If incremental unit discounts of the same magnitude as those given by the CQA were provided for the NASD's NMS Service, how would this pricing method effect the calculation of the charge for the subscriber's first unit?

In order to assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-83-13.

Copies of the submission, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those which may be withheld from the public,[15] will be available for inspection and copying at the Commission's Public Reference Room.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Dated: June 17, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-17002 Filed 6-23-83; 8:45 am]

BILLING CODE 8010-01-M

[13] *See* 8 NASDAQ News No. 1 (May 1983).

[14] The CQA, depending upon the exchange membership status of the subscriber, charges between $50.00 and $77.50 for the subscriber's first interrogation unit and between $5.00 and $7.75 for each additional unit.

[15] 17 CFR 240.24b-2.

[16] 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5466]

Grenler Capital Corp.; Application for License to Operate as a Small Business Investment Company (SBIC)

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Grenler Capital Corporation, Lincoln and Jefferson Avenues, New Square, New York 10977 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1983).

The officers and directors of the Applicant are as follows:

Dr. Stanley Greenberg, 307 Hicksville Road, Far Rockaway, New York 11691; President, Director; 42.5% Stockholder.

Dr. Peter David Machlis, 564 Longacre Avenue, Woodmere, New York 11598; Vice-President, Director; 5.0% Stockholder.

Dr. Benjamin Lerner, 1815 Avenue K, Brooklyn, New York 11230; Secretary, Director; 42.5% Stochholder.

Mr. Menachem David, 254 Edwards Boulevard, Long Beach, New York 11561; Treasurer; 10.0% Stockholder.

Mr. Meyer Steier, 1578 44th Street, Brooklyn, New York 11219; Advisor/Manager.

The Applicant will begin operations with a capitalization of $500,000 which will be a source of equity capital and long-term loans for qualified small business concerns.

The Applicant will conduct its operations principally in the State of New York.

As an SBIC under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial

soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New Square, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 14, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-17110 Filed 6-23-83; 8:45 am]

BILLING CODE 8025-01

[License No. 02/02-5465]

M&M Venture Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by M&M Venture Capital Corporation, Lincoln & Jefferson Avenue, New Square, New York 10977 with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1983).

The officers, and directors of the Applicant are as follows:

Moses Spielman, 214 Hewes Street, Brooklyn, N.Y. 11211; Director/Chairman of the Board/President; 50%.

Moses Friedman, 59 Quickway Road, Monroe, N.Y. 10950; Treasurer/Secretary; 50%.

Meyer Steier Assoc., 1578 44th Street, Brooklyn, N.Y. 11219; Manager; $25,000; None.

The Applicant will begin operations with a capitalization of $500,000 which will be a source of equity capital and long-term loans for qualified small business concerns.

The Applicant will conduct its operations principally in the State of New York.

As an SBIC under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 21, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-17109 Filed 6-23-83; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Commodity Policy Advisory Committee

The U.S. Trade Representative has taken steps to renew the Commodity Policy Advisory Committee. This Committee will be chartered pursuant to Section 135(c)(2) of the Trade Act of 1974 (19 U.S.C. 2155), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); and Section 4(d) of Executive Order No. 11846, March 27, 1975. The charter of this Committee will be filed 15 days from the date of this notice.

The Commodity Policy Advisory Committee will advise, consult with, and make recommendations to the United States Trade Representative and relevant cabinet agencies regarding policy issues related to negotiation or operation of international agreements affecting trade in commodities.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Room 123, Washington, D.C. 20506, (202) 395-6120.

Signed,

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 83-17010 Filed 6-23-83; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 470]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of Section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1983 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18.

United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated September 16, 1982 (47 FR 40974).

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1,2-bis (2,2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4, butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate compositon.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDNA.
Ednatol.
EDNP [ethyl 4,4,-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene dydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN]
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acide and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.

Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-timethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling grant, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro–2,3,5,6,-dibenzo-1,3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6, tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMENTN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT:

Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC: 20226 (202–566–7591).

Signed: June 17, 1983.

Stephen E. Higgins,

Director.

[FR Doc. 83–17108 Filed 6–23–83; 8:45 am]

BILLING CODE 4810–31–M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 123
Friday, June 24, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, June 30, 1983 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel.

PERSON TO CONTACT FOR MORE INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-913-83 Filed 6-22-83; 9:14 am]

BILLING CODE 6715-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., June 29, 1983.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreements Nos. 9902-15, 9973-9 and 5200-41: Modifications of the Johnson Scanstar, Euro Pacific Joint Service and Pacific Coast European Conference Agreements, respectively, to authorize inland service and ratemaking.
2. Agreement No. 10137-7: Extension of the Barber Blue Sea Line Joint Service Agreement through September 26, 1988.
3. Agreement No. 10467: Latin American Charter Agreement and Agreement No. 10468: Latin American Discussion Agreement.
4. Agreements Nos. 10424-2 and 10424-3: Modifications of the United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Conference to provide for establishment of uniform rules for free time, demurrage and detention and for other purposes.
5. Trans Freight Lines, Inc.: Petition for Reinstatement of General Order 29.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-913-83 Filed 6-22-83; 9:14 am]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 28173, Monday, June 20, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11 a.m., Wednesday, June 22, 1983, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed response to Congress regarding consumer protection regulations.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: June 22, 1983.

James McAfee,

Associate Secretary to the Board.

[S-915-83 Filed 6-22-83; 3:53 pm]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, June 29, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: June 21, 1983.

James McAfee,

Associate Secretary of the Board.

[S-911-83 Filed 6-21-83; 5:12 pm]

BILLING CODE 6210-01-M

5

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1313]

TIME AND DATE: 6:30 p.m. (c.d.t.) Wednesday, June 29, 1983.

PLACE: Blossomwood Elementary School, 1321 Woodmont Avenue, Huntsville, Alabama.

STATUS: Open.

AGENDA ITEMS:

A—Project Authorizations
- A1. Project Authorization No. 3660—Scrubber sludge oxidation facilities and additional sludge disposal area at Widows Creek Steam Plant.
- A2. Project Authorization No. 3661—Design, engineering, solicitation, and installation of telephone system in Muscle Shoals, Alabama, and network control facilities in Chattanooga, Tennessee.

B—Purchase Awards
- B1. Amendment to Contract 77K53-820732 with ITT Grinnell Corporation, Providence, Rhode Island, for Seismic Supports for Bellefonte Nuclear Plant.

C—Power Items
- C1. Modifications in guidelines for dispersed power production program with regard to the purchase of power from qualified facilities located outside the area in which TVA or distributors of TVA are a source of power supply.
- C2. Delegation of authority to permit mining of TVA's Dade County, Georgia, coal reserves.
- C3. Letter agreement with Mississippi Power & Light Company to increase the fixed rate basis of settlement for emergency assistance from 7.5 mills per kilowatthour to 100 mills per kilowatthour.
- C4. Letter agreement with Cincinnati Gas & Electric Company and Louisville Gas and Electric Company amending existing tri-party agreement to update toll provisions.
- C5. Phase II of limited demonstration of spent nuclear fuel rod consolidation at the Browns Ferry Nuclear Plant under contract No. TV-48296A with Department of Energy.
- C6. Supplement to letter agreement with the Southeastern Power Administration providing for a one-year extension of the agreement under which TVA purchases Cumberland River power.
- C7. Amendment to Contractual Arrangements with Tennessee Valley Public Power Association and Distributors Insurance Company (TVPPA Insurance).

D—Personnel Items

D1. Personal services contracts with Kenneth L. Penegar, Richard S. Wirtz, Kenneth D. McCasland, Sr., and James C. Winkles in connection with contracts disputes appeals.

D2. Renewal of consulting contract with John M. Kellberg, Knoxville, Tennessee, for consultation on major hydro projects and engineering problems associated with thermal power plants, requested by the Office of Engineering Design and Construction.

D3. Renewal of consulting contract with Sargent & Lundy, Chicago, Illinois, for advice and assistance in connection with the Bellefonte Nuclear Plant, requested by the Office of Engineering Design and Construction.

D4. Amendment to personal services contract with United Engineers & Constructors, Inc., Philadelphia, Pennsylvania, for architectural, engineering, and other related services, requested by the Office of Engineering Design and Construction.

D5. Personal services contract with BDM Corporation, McLean, Virginia, to provide for telecommunications system engineering support in connection with transition from South Central Bell system dependence to TVA-owned facilities, requested by the Division of Property and Services.

E—Real Property Transactions

E1. Sale of permanant easement to Decatur Transit, Inc., for construction, operation, and maintendance of barge fleeting facilities, affecting approximately 3.0 acres of wheeler Reservoir land in Limestone County, Alabama—Tract No. XWR–616E.

E2. Filing of condemnation suit.

F—Unclassified

F1. Contract with Chattanooga State Technical Community College covering arrangements for cooperation in a high technology training center.

F2. Cooperative agreement with U.S. Fish and Wildlife Service, Department of Interior, covering arrangements for wetlands mapping in the Tennessee Valley area.

F3. Contract with Kidder, Peabody, & Company, Inc., for cooperative efforts in seeking equity participants for the North Alabama coal-to-methanol project.

F4. Proposed Contract with Exxon Research and Engineering Company for Operation of the Ammonia from Coal Facility Using Exxon Donor Solvent Process Residue; and Proposed Research and Development Agreement with Texaco, Inc., for Use of the Ammonia from Coal Facility.

F5. Revised budget plan for fiscal year 1983—Midyear Review.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: June 22, 1983.

[S-914-83 Filed 6-22-83; 3:48 pm]

BILLING CODE 8120-01-M

federal register

Friday
June 24, 1983

Part II

Office of Management and Budget

Intergovernmental Review of Federal Programs

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs"

AGENCY: Management Reform Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice contains a letter from the President to governors, legislative leaders, and officers of major local government organizations. The notice also discusses how comments addressed to the Office of Management and Budget (OMB) during the public comment period on agency proposed rules on E.O. 12372 were handled, and future steps being undertaken to implement the Order.

FOR FURTHER INFORMATION CONTACT: Walter S. Groszyk Jr., Room 10236, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION:

Letter from the President

On June 23, 1983, the President wrote an identical letter to the state and local officials indicated above. The letter is as follows:

THE WHITE HOUSE
Washington
June 23, 1983.

Dear Scott: Nearly a year ago, I signed E.O. 12372, "Intergovernmental Review of Federal Programs," which clearly set out the direction I wanted Federal agencies to take in their dealings with state and local governments. Remembering my days in California, I specifically wanted the Federal agencies to be responsive to you and your fellow state and local elected officials. I wanted you to have greater influence in the actions we take that affect your jurisdictions—whether building a highway, awarding an elderly nutrition grant, or locating a sewage treatment plant.

With their joint publication of final rules tomorrow, the Federal agencies will clearly indicate to you and your colleagues how they will be responsive to your concerns. In essence, we have established an approach that is based on your own review and comment processes.

You now have three months to finalize your approach as we work together toward September 30th, the day this major change takes effect.

I pledge to you the full cooperation and support of my Administration as together, in the spirit of Federalism, we make intergovernmental cooperation a reality.

Sincerely,

Ronald Reagan

[The Honorable Scott M. Matheson, Governor of Utah, Salt Lake City, Utah 84114]

The Office of Management and Budget is publishing this letter for state and local officials who will be working together over the next several months to finalize a state process on intergovernmental coordination and review, and to select federal programs and activities to be covered under that state process.

Comments on Agency Proposed Rules

OMB received numerous comments on the agencies' Notices of Proposed Rulemaking. These comments were provided to all affected agencies as appropriate for inclusion in the agency dockets. As OMB did not publish any Notice of Proposed Rulemaking, we asked the agencies to consider the comments that were sent us. The agencies have done so, and have addressed these comments in the preambles to their final rules.

There were, however, several comments that the rulemaking agencies were unable to respond to. These comments asked that the United States Synthetic Fuels Corporation and the Interstate Commerce Commission be included among the federal agencies to which the Executive Order applies. OMB does not believe the Executive Order should be applied to these agencies. The Interstate Commerce Commission does not engage in federal financial assistance or direct federal development. The developmental activities of the Synthetic Fuels Corporation involve non-governmental entities and the Corporation itself is not an Exective Branch agency in the traditional sense.

Future Steps

OMB intends to work with the 23 federal agencies publishing final rules implementing the Executive Order in today's **Federal Register** on their efforts to carry out these rules. OMB will also receive from each state the initial selection of programs and activites to be covered under the state process and the name of the office or official designated as the single point of contact. OMB has also asked the governors to provide an assurance that their states have taken official action to designate a process, and that local elected officials were involved in the development of the process and in the selection of covered program.

For the time being, state and local officials and other interested parties are asked to contact the federal agency official identified in each final rule as a contact person if questions or concerns arise during the next several months. The federal agencies are directly responsible for the implementation of the Executive Order and will devote adequate staff resources to provide immediate and responsive help. OMB will not have day-to-day operational responsibilities regarding federal programs and activities under the Order, but will oversee agency implementation to ensure federal responsiveness to state and local governments.

Dated: June 23, 1983.

Harold I. Steinberg,

Associate Director for Management.

[FR Doc. 83-17259 Filed 6-23-83; 8:45 am]

BILLING CODE 3110-01-M

State Plans Eligible for Modification Under Executive Order 12372

Section 2(d) of Executive Order 12372 directs Federal agencies to "allow" states to simplify or consolidate existing Federally required State Plans and, where permitted by law, to "encourage" states to substitute their own plans for Federally required state plans.

State plans required by the Federal Government that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order are listed below.

Dated: June 23, 1983.

Harold I. Steinberg,

Associate Director for Management.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372

Agency and CFDA No.	Program title
Agriculture:	
10.550	Food Distribution.
10.557	Special Supplemental Food Program for Women, Infants and Children (WIC).
10.559	Summer Food Service Program for Children.
10.560	State Administrative Expenses for Child Nutrition.
10.564	Nutrition Education and Training Program.
10.565	Commodity Supplemental Food Program.
Contact: John Stokes (202/755-3017).	
Education:	
84.002	Adult Education—State Administered Programs.
84.034	Public Library Services.
84.035	Interlibrary Cooperation.
84.048	Vocational Education—Basic Grants to States.
84.049	Vocational Education—Consumer and Homemaking Education.
84.050	Vocational Education—Program Improvement and Supportive Services.
84.052	Vocational Education—Special Programs for the Disadvantaged.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.	Program title
84.053	Vocational Education—State Advisory Councils.
84.121	Vocational Education—State Planning and Evaluation.
84.126	Rehabilitation Services—Basic Support.
Contact: Leroy Walser (202/447-9043).	
Energy:	
81.0041	State Energy Conservation.
81.0042	Weatherization Assistance for Low-Income Persons.
81.0043	Supplemental State Energy Conservation.
81.0050	Energy Extension Service.
81.0052	Energy Conservation for Institutional Buildings.
Contact: Richard Brancato (202/252-9240).	
HHS:	
13.630	Administration on Developmental Disabilities—Basic Support and Advocacy Grants.
13.633	Special Programs for the Aging—Title II, Parts A and B—Grants for Supportive Services and Senior Centers.
13.635	Special Programs for the Aging—Title III, Part C—Nutrition Services.
13.645	Child Welfare Services—State Grants.
13.646	WIN.
13.659	Adoption Assistance.
Interior:	
15.252	Abandoned Mine Land Reclamation Program.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.	Program title
Contact: Gordon Boe (202/245-6036).	
15.605	Fish Restoration.
15.611	Wildlife Restoration.
15.916	Outdoor Recreation—Acquisition, Development and Planning.
15.904	Historic Preservation Grants-in-Aid.
Contact: Timothy S. Elliott (202/343-4722).	
Justice:	
16.540	Juvenile Justice and Delinquency Prevention—Formula Grant Program.
16.541	Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants (except Grants to Nongovernmental Entities).
Contact: Lynn C. Dixon (202/724-5947).	
Labor:	
(Sec. 104)	Job Training Partnership Act (PL 97-300).
17.207	Employment Service.
Contact: Joyce Kaiser (202/376-6503).	
Transportation:	
20.308	Local Rail Service Assistance.
20.600	State and Highway Community Safety.
20.700	Gas Pipeline Safety.
EPA:	
66.001	Air Pollution Control Program Grants.
66.419	Water Pollution Control—State and Interstate Program Grants.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.	Program title
Contact: Kelley Andrews (202/426-1524).	
	Water Quality Management Planning.
66.432	State Public Water System Supervision Program Grants.
66.433	State Underground Water Source Protection Program Grants.
66.438	Construction Management Assistance Grants.
66.451	Hazardous Waste Management Financial Assistance to States.
66.600	Environmental Protection Consolidated Grants—Program Support.
66.700	Pesticides Enforcement Program Grants.
	Pesticides Applicator Certification and Training.
Contact: Jack Gwynn (202/382-5268).	
FEMA:	
83.503	Emergency Management Assistance.
83.505	State Disaster Preparedness Grants.
83.506	Earthquake and Hurricane Loss Study and Contingency Planning Grants.
83.516	Disaster Assistance: Two subprograms—1. Temporary Housing (if the State assumes operational responsibility); 2. Individual and Family Grants.
Contact: Herb Jones (202/287-3899).	

[1] CFDA = Catalog of Federal Domestic Assistance.

[FR Doc. 83-17260 Filed 6-23-83; 8:45 am]
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federal register

Friday
June 24, 1983

Part III

Department of Agriculture

Office of the Secretary, Farmers Home Administration, Forest Service, and Food and Nutrition Service

Intergovernmental Review of Department of Agriculture Programs and Activities; and

Rescission of Regulations Involving Consultation With State and Local Governments; Final Regulations and

Department of Agriculture Proposal to Exclude the Cooperative Extension Service From Executive Order 12372; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Intergovernmental Review of the Department of Agriculture Programs and Activities

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking implements Executive Order 12372, "Intergovernmental Review of Federal Programs." It applies to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture. Executive Order 12372, and these regulations, are intended to replace the intergovernmental consultation system developed under the Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

DATE: Effective September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Office of Finance and Management, Financial Management Divsion, 14th and Independence Avenue, S.W., Room 143-W, Administration Building, Washington, D.C. 20250, on (202) 382-1553.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3082), the Department, along with 25 other Federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 Federal agencies and OMB, published a Notice in the Federal Register (48 FR 17101) on April 21, 1983, reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies, which were also incorporated into the Department's rulemaking docket, the Department received approximately 160 letters on government-wide issues during the initial comment period. In addition, the Department received 903 letters specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order and other issues pertaining only to the Department.

In preparing this final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 27 Federal agencies, that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with State and local elected officials and to accommodate their concerns to the greatest extent possible.

Several State, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give State and local elected officials more time to establish the State processes and to consider which Federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983, (48 FR 15587, April 11, 1983). The Department's existing regulations and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

In connection with this final rule, the Department is rescinding § 3015.203, its existing regulation implementing former OMB Circular A-95. Regulations and directives promulgated by individual USDA Agencies will be removed by each Agency simultaneously with this final rule.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982. (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. The Executive Order:

—Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance and direct Federal development;
—Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not;
—Allows States to simplify, consolidate, or substitute State plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the State process, the single point of contact, and the Federal agency's "accommodate or explain" response to State and local comments submitted in the form of a recommendation.

State Process

The State process is the framework under which State and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the State process: (1) a State must tell the Federal agency which programs and activities are being included under the State process, and (2) a State must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. The Executive Order provides that States are also to consult with local governments when establishing the State process. Any other components are at the discretion of the State. This lack of prescriptiveness gives State and local officials the flexibility to design a process that responds to their interests and needs.

A State is not required to establish a State process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how Federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most State processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular State, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed Federal financial assistance or direct

Federal development, and to aid in reaching a State process recommendation:
—A means of consulting with local officials; and,
—A means of giving notice to prospective applicants for Federal assitance as to how an application is to be managed under the State process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the State selects which of these Federal programs and activities are to be reviewed through the State process and sends the initial list of selected programs and activities to OMB. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

The Federal agency provides the State process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the State has among its options those of: preparing and transmitting a State process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to State process procedures.

For proposed actions under programs or activities not selected, the Federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The State single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by Federal agencies. The single point of contact does so by transmitting a State process recommendation. (The terms "accommodate or explain" and State process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for Federal agency consideration any views differing from a State process recommendation, and receiving a written explanation of a Federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal government for the single point of contact, although a State could choose to broaden the single point of contact role.

The single point of contact need not submit for Federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no State process recommendation. Commenting officials and entities can submit such views directly to the Federal agency.

A State need not designate a single point of contact. However, if a State fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the Federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

Accommodate or Explain

When a single point of contact transmits a State process recommendation, the Federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "State process recommendation" is developed by commenting State, areawide, regional, and local officials and entities participating in the State process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A State process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a State process recommendation. Also, the State government need not be party to such a State process recommendation.

A State process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and subsection numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is considered in the final rule. Additionally, section titles have been changed in this analysis to reflect those titles set forth in the final rule.

Proposed rule (section)	Final rule (section)
3015.300 (Reserved)	
3015.301	3015.300.
3015.302	3015.301.
3015.303(a)	3015.302.
3015.303(b)	3015.306(a).
3015.304	3015.303.
3015.305(a)	3015.305(b).
3015.305(b)	3015.305(d).
3015.305(c)	3015.305(c).
3015.306(a)	3015.307(b).
3015.306(b)	3015.306(a).
3015.306(c)	3015.307(a).
3015.306(d)	Deleted.
3015.306(e)	3015.308.
3015.307(a)	3015.309(a).
3015.307(b)	3015.309 (b) (c).
3015.308	3015.310.
3015.309	3015.311.
3015.310	3015.312.

Portions of the final rule not listed in this table §§ 3015.304, 3015.305(a), 3015.306(b), and 3015.307(c)) are new.

Section 3015.300 Purpose.

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. These statutes provide as follows:

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Section 401 of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506.

§6506. Development Assistance

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334.

§3334. Coordination of Federal aids in metropolitan areas.

(a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with the comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

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A broad spectrum of commenters, including State, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that the Federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 401 as authority as well as section 204. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulations) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that Federal actions should be as consistent as possible with planning activities and decisions at State, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The final rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other Federal agencies on one hand, and State and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of Federal, State and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulations, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 3015.301 Definitions.

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined.

The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulations. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "State plans," "direct Federal development," or "Federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to Federal financial assistance) has shown that it is difficult to draft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of State plans and program inclusions accompanying this rulemaking provide adequate operational information upon which State and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give Federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in section 3015.309. In this section, the Secretary accepts the State process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "State process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 3015.302 Applicability.

This section is substantially very similar to § 3015.303(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal government to exclude any programs or activities from coverage under the Order and these regulations, and that the elected officials participating through the State process are the only proper parties to decide what should be excluded from the State process. Other commenters objected to various criteria used by the Federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development program and activities, and the Order mandates consultation only when State and local governments provide non-Federal funds for, or are directly affected by the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many National security actions, even those affecting State and local jurisdictions, involve classified information. It is meaningless to expect State and local review of National security matters, for example, when access to the plans or documents for the proposed Federal action is not possible for National security reasons. It is appropriate for Federal agencies to decide which of their activities are Federal financial assistance or direct Federal development.

There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal government functions either have public

participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which State and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB or OMB's recommendations to the President concerning budget formulation).

A purpose of block grant programs is to give funding discretion to State and local governments. There is little point in requiring State and local coordination of funding decisions under block grants when State and local governments, rather than the Federal government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a State process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. The criteria and particular exclusions are discussed in more detail in that section of the preamble concerning scope issues.

To provide information on the activities and programs available for selection for State processes, the Department is publishing a Notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other programs available for selection. This information is being published in a separate Notice rather than as part of this rule to allow changes to be made more conveniently in the future. The Department will seek public comment on proposed future program or activity exclusions as they occur.

Section 3015.303 Secretary's General Responsibilities.

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 3015.304 Federal Interagency Coordination.

Some commenters, including those suggesting a Federal single point of contact, asked the Department and other Federal agencies to do more in ensuring that Federal agencies communicate not only with State and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of Federal agencies, and Federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 3015.305 State Selection of Programs and Activities.

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 3015.302 is eligible for selection for a State process. This paragraph also declares, more explicitly than the NPRM, that States are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the State's obligation in this regard, as well as in the establishment of a State process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the State submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of State processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between State and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by State and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a State process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a State before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 3015.305 of the NPRM. There were no comments objecting to the substance of these subsections in the NPRM. Language added to paragraph (c) of the final rule specifies that the State must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of States to involve local elected officials in decisions concerning what programs are selected for the State process. The subsection also allows the Department to establish deadlines for States to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having, on short notice, to make midstream changes in coordination procedures. In addition, the Department has made some editorial changes for clarity.

A number of commenters asked what procedures apply when a State chooses not to adopt a process under the Order or when a particular program or activity is not selected for a State process. This question is answered in paragraph (b) of § 3015.306 discussed below.

Section 3015.306 Communication With State and Local Elected Officials.

Paragraph (a) incorporates material from §§ 3015.303(b) and 3015.306(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with State and local elected officials applies to programs and activities subject to the Order that are covered by a State process. This change is intended to emphasize that it is with the State process, not just a Governor's office or other State government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a State process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a State process. The Department may also take the initiative at any time to contact any

interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the State process or the single point of contact to bring about this communication or consultation.

When the Department notifies the State process with respect to a proposed action concerning a program or activity that has been selected for the State process, notification of areawide, regional, and local entities for purposes of sections 204 and 401 is the responsibility of the State process. The single point of contact could be the information channel for this purpose. The Department need not have to notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a State does not have a State process or where the State process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to State, areawide, regional or local officials or entities that would be directly affected by the proposed Federal financial assistance or direct Federal development. This notice may be either through publication (e.g., a notice in the Federal Register or in a publication widely available in the area potentially affected by the proposed Federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Department they should contact for more information.

Paragraph 3015.306(c) is new. This subsection has been added to ensure that communications under the Executive Order will be channeled to appropriate officials of the Department and will ensure that official correspondence pertaining to the Order is handled expeditiously.

Section 3015.307 State Comments on Proposed Federal Financial Assistance and Direct Federal Development.

More commenters—over a third of the total—addressed § 3015.306(c) of the NPRM (redesignated § 3015.307(a) in the final rule) than any other provision in the proposed regulations. The NPRM proposed that, except in unusual circumstances, the Secretary would give States at least 30 days to comment on any proposed Federal financial assistance or direct Federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the State need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to States either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to Federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain at 30 days.

The Secretary will establish, in the notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period would begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the State process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected State, areawide, regional, and local entities regarding the proposed Federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the State process are afforded adequate time to review and comment on an application or project proposal.

Several commenters indicated that a notice of intent to apply for funds was the key element in any timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the State process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the State process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application. Paragraph (b) of this section is derived from § 3015.306(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This subsection is intended to make clear that, when this responsibility is delegated, these procedures apply just as if the matter were handled at the State level.

Paragraph (e) of § 3015.306 of the NPRM has been dropped. A new § 3015.308 of the final rule describes how the Secretary receives and responds to comments.

Section 3015.308 Processing Comments.

This new section replaces § 3015.306(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 3015.306(e) had provided that the Secretary would respond as provided in the Order to all comments from a State that are provided through a State office or official that acts as a single point of contact under the Order between the State and the Federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a State instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their State process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement, through these regulations, section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this subsection.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the

Executive Order requires a means of handling the communication and information flow between Federal-State/State-local Federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all Federal agencies and all parties within a State know that a particular office or official performs this State/local-Federal communications link for the State process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of State and local elected officials on proposed Federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the State and local elected officials who establish each State process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 3015.309, if two conditions are met. First, the State must have designated a single point of contact. Second, the single point of contact must have transmitted a State process recommendation. The single point of contact, and not the applicant, must transmit the recommendation to the Department. If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The "State process recommendation" is intended to clarify the reciprocal responsibilities of the State and Federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that Federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of State and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that State and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from the Federal government. Where States and other directly affected parties carry out these responsibilities by forging a State process recommendation, it is highly appropriate for the Federal government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building was described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more that 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in section 3015.309 to a State process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the State process recommendation, all officials and entities within a State are assured that comments that differ from the State process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no State process recommendation. However, the single point of contact should advise the commenting officials and entities when a State process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the State process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a seleted program or activity that differ from a State process recommendation. This requirement will ensure that, as sections 204 and 401 specify, the Department considers all views from State, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no State process or for programs that are not selected for a State process. Paragraph (c) provides that, in the absence of a State process, or if the single point of contact does not transmit a State process recommendation, State, local, regional, and areawide officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the State process does not cover a particular progam or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from State, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other Federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that Federal agencies tell applicants about the requirements of each State process; that comments from the State process be sent to the applicant before the application is forwarded and that the applicant attach these to the application; that the State process be able to require a "notice of intent;" that Federal agencies should not act on an application before receiving comments from the State process; that Federal agencies require applicants to submit materials requested by the State process; and, that Federal agencies have

applicants themselves contact interested local parties.

Although, the Department recognizes a responsibility to work with its applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each State process should establish the "paper flow" procedures best suited to its situation. Where the State process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with the application to the Department. However, this does not obviate the necessity for transmitting the State process recommendations to the Department though the single point of contact. The point here is that State processes have the option of also sending comments through the applicant to the Federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 3015.309 Accommodation of Intergovernmental Concerns.

Paragraph (a) of this section now provides that if a State process provides a State process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the State process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a State process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the State process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of Federal financial assistance or the start of direct Federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the State process to formulate an appropriate political response if the issue is sufficiently important within the State.

The Department has included a new paragraph (c) in the regulations to clarify when the ten day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the long-standing successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the 16th day after the day the Department sent the letter.

Some commenters indicated what they sought most was Federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable, consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 3015.310 Interstate Situations.

This section is based on § 3015.308 of the NPRM. One feature of the NPRM section—the provision of 45 days for comments in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases, except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater Federal guidance or involvement in interstate situations, especially when various affected States did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected States mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of States involved in an interstate situation in an attempt to secure agreement. However, this should not be a regulatory requirement.

The Department believes that designated areawide agencies in interstate metropolitan areas do have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a State single point of contact and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a State process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG), represents jurisdictions in an interstate area including parts of Maryland, Virginia, and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. However, if a State process recommendation differing from the Washington COG recommendation is also transmitted by another State's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 3015.311 Simplification, Consolidation, or Substitution of State Plans.

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that States should be able to simplify State plans, but objected to allowing States to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of State plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that Federal agencies allow the consolidation of State plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated State plan continues to meet all Federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which Federal agencies disapprove modified State plans. The Department believes that such a process is not necessary, because if a Federal agency disapproves a modified plan for failure to meet Federal requirements, the State can appeal the decision through normal agency procedures. In any event, during the review process before disapproval, the Department will work with States to resolve problems that could impede approval.

A few commenters recommended that there be a Federal "single point of contact" for State plans or other purposes. The Department believes this idea would not work because of differing agency responsibilities under the wide variety of program statutes that various Federal agencies carry out. In addition, Federal agencies need to retain existing delegations of State plan approval authority. However, the Department and other Federal agencies will each designate a focal point with whom States can deal on State plan matters. In addition, the Federal agencies having State plans intend to establish an informal interagency steering group, which will meet quarterly to discuss State plan matters. Through this steering group, as well as by interagency contacts in specific situations, Federal agencies will coordinate with each other in cases when States consolidate plans across Federal lines. This coordination should promote consistent determinations among and within agencies on State plans.

Finally, one commenter suggested that the Federal agencies develop a model State plan format that could be used by the States. While we are willing to provide suggestions in response to specific State questions (including providing formats that have been used successfully by other States), we believe that States should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary use of States could come to be regarded, either by Federal agencies or by States, as required.

A list of State plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's **Federal Register** and will be updated periodically.

Section 3015.312 Waivers.

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing Federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances in which an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulation. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the State process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of this regulation, there are several other comments to which the Department would like to respond. Several commenters said that OMB should have a stronger oversight role, thus ensuring that Federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that Federal agencies are not really interested in consulting with State and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and that it will act quickly to respond to complaints from State, areawide, regional, and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federal policy, and the Administration's policymaking officials intend the policy to be carried out fully by every one in their agencies.

OMB will have a general oversight role with respect to Federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to Federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that effect many Federal agencies with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with States to integrate handling of some of these crosscutting requirements with the official State process. However, regardless of the structure of a State's process or whether there is a State process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated

responses to Federal agencies relating to these matters. Under the Executive Order system, a State could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies also could continue any arrangements or relationships with entities in the State that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Department received numerous letters regarding the proposed inclusion of Cooperative Extension Service (CES) programs within the scope of the Order. However, since much of the public comment reflected a misinformed view of the purpose of the President's Executive Order and the implementing policies, a separate notice discussing the proposed inclusion/exclusion of CES is being published for public comment simultaneously with this final rule. At this time, CES is not being included in the scope of the Order pending further consideration based upon the reopened comment period for this purpose.

The Department received five letters regarding the exclusion of Soil and Water Loans and Recreation Facility Loans programs. Specifically, commenters believed that States should have the privilege of reviewing any proposals or plans to develop or manage any facilities which would have an impact on the social, physical, or economic environment of an adjoining area through creating additional demands for schools, housing, recreation areas, tourist facilities, utility usage, public services, transportation needs, or which would require any local government or branch of State government to provide funds or services for matching or continuation. One commenter recommended that any program or activity relating to, or affecting a function of a general purpose local government or a State agency should be included.

The Department concurs that the aforementioned programs are of such a nature as to create a direct impact on the environment, planning, zoning, licensing, and the general infrastructure of a State, and, therefore, these programs have been included within the scope of the Order.

The Department received four letters regarding the exclusion of the Low to Moderate Income Housing Loans program and two letters regarding the exclusion of the Rural Abandoned Mine program. Also, one commenter wanted to routinely review Soil Survey (Land Grant University only), Conservation Operations—Technical Assistance and Conservation Operations—Inventory and Monitoring programs which had been proposed for exclusion. These programs consist primarily of data collection and dissemination to the general public, based on National needs and technical criteria. Further, there is no research, development, or demonstration activities with either a unique geographical focus or direct relevance to the governmental responsibilities of a State or local government. Therefore, the Department has determined that these programs do not meet the established criteria for inclusion under the Executive Order.

Five letters were received regarding the proposed exclusion of Rural Electrification Loans and Loan Guarantees and Rural Telephone Loans and Loan Guarantees.

The E.O. states that "* * * State or local governments * * * that would be directly affected by proposed Federal financial assistance * * *" should be included within the scope of the Order. State and local governments will be affected by these programs by the physical impact that these utility sites will have on local areas. Financial concerns such as an increase in the local tax base must also be considered. It is also the intent of the Order to include programs in which Federal funding is directed to any State or local government. In both these programs, eligible applicants include municipalities or other "public bodies". Therefore, those loans and loan guarantees which are directed to municipalities or other public bodies are included within the scope of the Order.

The Department received two letters requesting the inclusion of several Agricultural Stabilization and Conservation Service (ASCS) programs. One commenter requested inclusion of three on the basis that the programs would have an impact on forestry concerns. The other commenter requested the inclusion of 13 of the agency's programs stating that the Department has been excessive in its interpretation of what could or should be excluded from coverage under the Executive Order. The Department, however, stands behind its original decision to exclude these programs because they involve direct financial assistance between the Federal government and individuals.

The Department received three letters regarding the exclusion of Animal and Health Inspection Service programs from coverage under the Executive Order. Specifically, one commenter stated that they were quite satisfied with the current review process and additional reviews would be superfluous. The same commenter also felt that USDA agency personnel kept them well informed about the programs and any changes that occurred. One letter addressed a particular pest control problem and stated that additional State review procedures would only tend to delay the steps necessary to control the pests during their most critical stages of development. Most States that would choose to review this program would have performed all reviews and studies well before the critical time of implementation was at hand. Since major pest control programs, such as spraying for Gypsy-Moths or the California Medfly, would have a significant impact on State or local areas, the Department believes that States should be provided with an opportunity to review and comment on them, if they so desire. However, in emergency situations, the Secretary may waive the provisions of these regulations.

The Department received nine letters regarding the inclusion of Forest Service (FS) programs. Two commenters requested inclusion of National Forest System Activities and FS land exchange proposals. One commenter felt that any program or activity relating to or affecting a general purpose local government or a State agency be included and that the final decision for inclusion or exclusion should be left to State and local governments cooperatively. Two other commenters requested inclusion of specific National Forest System Activities such as FS Schools and Roads—Grants to States and FS Schools and Roads—Grants to Counties, while one commenter requested inclusion of FS School Funds—Grants to Arizona and FS Additional Lands—Grants to Minnesota. Two commenters recommended inclusion of FS projects of small scale or size that are highly localized. Concern was expressed that FS is undertaking very sensitive direct development on relatively small parcels of land and that exclusion of such from coverage under the Order should only be subject to agreement with affected State and local agencies. Three commenters requested inclusion of the FS Young Adult Conservation Corps program. The reason stated by two commenters was that they wanted to review any proposals or plans to develop or manage any facilities which would impact the social, physical, or economic environment of an adjoining area or

which would require any local government or branch of State government to provide funds or services for matching or continuation. One commenter requested inclusion of FS research grants and cooperative agreements and all FS research activities. Finally, the Department received one letter requesting exclusion of National Forest land management processes and activities and the Cooperative Forestry Assistance program, since existing policies and regulations concerning consultation and review for those programs and activities are consistent with the policies and objectives of the Order.

In general, as stated earlier in this preamble, the Department believes that, while the purpose of the Order is to give State and local governments increased access to and influence on Federal decisionmaking, certain Federal programs and activities, by their nature, should be excluded from its requirements. The Department has excluded those National Forest System Activities for which funds are distributed by statutory formulas, and for which the Department has no authority to approve specific sites or projects where the funds will be used. Additionally, those National Forest System Activities involving land management practices, negotiations of involved and sensitive land exchanges, programs with characteristics inappropriate for coverage, and projects of a small scale or size which are highly localized, are excluded unless they involve direct development activities. However, the Department will continue to consult with appropriate State and local officials in accordance with Section 401 of the Intergovernmental Cooperation Act.

FS land management practices not involving direct development are excluded since such practices involve the daily administration and protection of resources on National Forest System lands. An additional State review under the Order would have little or no bearing on Federal decisions in this area. Negotiations involving land exchange proposals are excluded since a review under the Executive Order could result in the premature release of appraisal figures for the value of the lands, thereby causing possible local speculation and higher costs to the government.

Those small scale projects not involving direct development are excluded, as the Department believes that such small scale projects would have little if any impact on State or local governments.

Regarding coverage of the FS Young Adult Conservation Corps, the comments made on this do have merit. However, the program authority expired on September 30, 1982. Consequently, there is no funding or activity for this program, and the issue of coverage under the Order is irrelevant.

The Department has excluded the FS research grants and cooperative agreements and all FS research activities. As stated earlier, such basic research is National in scope and has no impact on State or local governments.

Regarding the exclusion request for FS National Forest land management practices and Cooperative Forestry Assistance, the Department has determined that these programs and activities have formal and informal consultation process already in place which provide State and local government officials meaningful opportunities to contribute to program planning and decisionmaking. All of these processes are fully in accord with the spirit and intent of the Executive Order. It is in this spirit that the Department is continuing existing processes for consultation, rather than imposing additional or duplicative regulatory requirements and disrupting existing avenues of communication, procedures and time frames for these programs. Therefore, while these programs have not been excluded, if a State chooses to select these programs with existing consultation processes, it must agree to adopt the existing process.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow State and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant, in any case. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 7 CFR Part 3015

Grant programs (Agriculture), Intergovernmental relations.

PART 3015—[AMENDED]

1. The authority citation for Part 3015 reads as follows:

Authority: 5 U.S.C. 301.

§ 3015.203 [Reserved]

2. In Subpart U—Miscellaneous, § 3015.203 is removed and subsequently reserved.

3. For the reasons set out in the preamble, the Department of Agriculture amends Title 7, Code of Federal Regulations, Part 3015, by adding a new Subpart V, to read as follows:

Subpart V—Intergovernmental Review of Department of Agriculture Programs and Activities.

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 3015.300 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs", issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, arewide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the

Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 3015.301 Definitions.

"Department" means the U.S. Department of Agriculture.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Island, or the Trust Territory of the Pacific Islands.

§3015.302 Applicability.

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 3015.303 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 3015.304 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 3015.305 State selection of programs and activities.

(a) A State may select any program or activity published in the Federal Register in accordance with § 3015.302 of this subpart for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 3015.306 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial asssistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of Finance and Management, Room 143–W, Administration Building, Washington, D.C. 20250, Attention: E.O. 12372.

§ 3015.307 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 3015.308 Processing comments.

(a) The Secretary follows the procedures in § 3015.309 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 3015.305.

(b) (1) The single point of contact is not obligated to transmit comments form State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 3015.309 of this subpart.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 3015.309 of this subpart, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 3015.309 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 3015.310 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 3015.309 of this subpart, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 3015.309 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 3015.311 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) "Simplify" means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) "Consolidate" means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, the planning period for the consolidated plan.

(3) "Substitute" means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 3015.312 Waivers.

In an emergency, the Secretary may waive any provision of these regulations.

Issued at Washington, D.C.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Approved: June 14, 1983.

John R. Block,

Secretary of Agriculture.

[FR Doc. 83-16726 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-KS-M

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7 CFR Part 3015

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule related notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, appearing in this Part III in today's **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 143–W, Administration Building, Washington, D.C. 20250 (telephone (202) 382–1553).

SUPPLEMENTARY INFORMATION: The listing of programs and activities that are subject to Executive Order 12372 is listed by the Catalog of Federal Domestic Assistance Number as follows:

Animal Plant and Health Inspection Services

CFDA No.

10.025 All Domestic Programs and Activities.

Agricultural Marketing Service

10.156 Federal/State Marketing Service

Farmers Home Administration

10.405 Farm Labor Housing Grants *
10.409 Irrigation and Drainage Loans *
10.411 Site Development Loans *
10.411 Self-Help Site Development Loans *
10.413 Recreation Facility Loans *

10.414 Resources Conservation and Development Loans *
10.415 Rural Rental Housing Loans *
10.416 Soil and Water Loans *
10.418 Water and Waste Disposal Loan and Grant Program *
10.419 Watershed Loans and Advances *
10.420 Mutual and Self-Help Housing Grants *
10.420 Self-Help Technical Assistance Grants *
10.422 Business and Industrial Loans *
10.423 Community Facilities Loans *
10.424 Industrial Development Grants *
10.427 Rural Assistance Payments *
10.430 Energy Impacted Area Development Assistance *
10.431 Technical and Supervisory Assistance Grants *
10.432 Biomass Energy and Alcohol Fuel Loans *

* Programs covered by Section 204 of the Demonstration Cities and Metropolitan Development Act.

Food Safety and Inspection Service

10.475 Cooperative Meat and Poultry Inspection Program (wholesale meat, poultry and Talmadge-Aiken)

Food and Nutrition Service

10.550 Food Processing
10.550 Food Distribution Program on Indian Reservations
10.553 School Breakfast Program
10.555 National School Lunch Program
10.556 Special Milk Program for Children
10.557 Special Supplemental Food Program for Women, Infants and Children
10.558 Child Care Food Program
10.559 Summer Food Service Program
10.560 State Administrative Expenses for Child Nutrition
10.561 State Administrative Matching grants for Food Stamp Program
10.564 Nutrition Education and Training Program
10.565 Commodity Supplemental Food Program

Forest Service

10.664 Cooperative Forestry Assistance
National Forest System Land Management Practices Which Involve Direct Development Activities

Rural Electrification Administration

10.850 Rural Electrification Loans and Loan Guarantees to governmental entities
10.851 Rural Telephone Loans and Loan Guarantees to governmental entities

Soil Conservation Service

10.901 Resource Conservation and Development
10.904 Watershed Planning and Operations
10.904 Flood Plain Management
10.906 River Basin Survey and Investigation

June 14, 1983.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 83-16729 Filed 6-23-83; 8:45 am]
BILLING CODE 3410-KS-M

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7 CFR 3015

Department of Agriculture Programs and Activities Excluded from Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule related notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested persons of programs and activities excluded from the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, appearing in this Part III in today's **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 143-W, Administration Building, Washington, D.C. 20250 (telephone (202) 382-1553).

SUPPLEMENTAL INFORMATION: This listing of programs and activities excluded from the scope of Executive Order 12372 is listed by the Catalog of Federal Domestic assistance number as follows:

Agricultural Research Service

CFDA No.

10.001 Basic and Applied Agriculture Research—Research, development, and demonstration that does not have a unique geographic focus, are not directly relevant to State and local government responsibilities, do not require an EIS, and do not expose the public to adverse exposure or hazard. These activities are National in scope and the results of research are beneficial to National goal

Agricultural Stabilization and Conservation Service

10.051 Commodity Loans and Purchases—Direct payments to individuals
10.052 Cotton Production Stabilization—Direct payments to individuals
10.053 Dairy Indemnity Payments—Direct payments to individuals
10.054 Emergency Conservation Program—Direct payments to individuals
10.055 Feed Grain Production Stabilization—Direct payments to individuals
10.056 Storage Facilities and Equipment Loans—Direct payments to individuals
10.058 Wheat Production Stabilization—Direct payments to individuals
10.059 National Wool Act Payments—Direct payments to individuals
10.062 Water Bank Program—Direct payments to individuals
10.063 Agricultural Conservation Program—Direct payments to individuals
10.063 Appalachian Land Stabilization and Conservation Program—Direct payments to individuals
10.064 Forestry Incentives Program—Direct payments to individuals
10.065 Rice Production Stabilization—Direct payments to individuals
10.066 Emergency Feed Program—Direct payments to individuals
10.067 Grain Reserve Program—Direct payments to individuals
10.068 Rural Clean Water Program—Direct payments to individuals

Agriculture Marketing Service

10.153 Market News—Partially fee supported activity—non financial assistance—Dissemination of Technical Information
10.154 Market Supervision and Assistance-Fee supported trust fund activity—non financial assistance—Provision of specialized services
10.155 Marketing Agreements and Orders—Advisory services and counseling—non financial assistance—Provisions of specialized services
10.162 Inspection Grading and Standardization—Fee supported trust fund activity—non financial assistance—Provisions of specialized services
10.163 Market Protection and Promotion—Provisions of specialized services—non financial assistance—Advisory services and counseling
10.164 Wholesale Market Development—Applied research to improve the efficiency of the Food distribution system and assist in developing better wholesale market centers

10.165 Perishable Agriculture Commodities Act—Fee supported trust fund activity—non financial assistance—Investigation of complaints

Cooperative State Research Service

10.200 Special Research Grants—Basic Research grants in Food and Agricultural Sciences

10.200 Native Latex Research—Basic Research in the commercialization of Native Latex

10.202 Cooperative Forestry Research—Formula grants to support research, development and demonstration programs which are National in scope

10.203 Payments to Agricultural Experiment Stations under the Hatch Act—Formula grants to support Agricultural Research at State Agricultural Experiment Stations

10.205 Payments to 1890 Land-Grant—Formula grants to support Colleges and Tuskegee Institute—Agricultural Research at 1890 Land-Grant Colleges and Tuskegee Institute

10.205 1890 Land-Grant College Research Facilities—Formula grants to upgrade research facilities to strengthen capacity to conduct research in the Food and Agricultural Sciences

10.206 Competitive Research Grants—Basic Research grants in the areas of Biological Nitrogen Fixation, Biological Stress on Plants, Photosynthesis, Genetic Mechanisms of Crop Improvement and human requirements for nutrients

10.207 Animal Health and Disease Research—Formula grants to support research, development, and demonstration programs which are National in scope

10.208 Alcohol Fuels Research Grants—Basic Research on evaluation, treatment, and conversion of biomass resources for the manufacture of ethyl alcohol

Economic Research Service

10.250 Economic Analysis and Research—Research, development and demonstration program; and direct financial assistance between the Federal government and a nongovernmental entity

Agriculture Cooperative Service

10.350 Technical assistance to Cooperatives—Applied research on cooperatives matters. Funding arrangements with cooperative and State universities.

Human Nutrition Information Service

10.375 Consumer Nutrition—Research development, and demonstration. Program has National focus, is not directly relevant to the responsibilities of a state or local government, does not require an Environmental Impact Statement, and does not require unusual measures to limit the possibility of adverse exposure or hazard to the general public

10.375 Nutrition Guidance and Education Research—Research development, and demonstration. Program has National focus, is not directly relevant to the responsibilities of a state or local government, does not require an Environmental Impact Statement, and does not require unusual measures to limit the possibility of adverse exposure or hazard to the general public

10.375 Food and Nutrition Information—Research, development and demonstration. Program consists of maintaining a library collection of materials on food and nutrition, lending materials to nongovernmental entities and government agencies, and developing bibliographic data base. No interpretation of information is provided. Program has a national focus, is not directly relevant to the governmental responsibilities of a state or local government, does not require an Environmental Impact Statement, and does not require unusual measures to limit the possibility of adverse exposure or hazard to the general public

Farmers Home Administration

10.404 Emergency Loans and Economic Emergency Loans—Emergency assistance to nongovernmental entities

10.406 Farm Operating Loans—Direct financial assistance between the Federal government and non-governmental entities

10.407 Farm Ownership Loans—Direct financial assistance between the Federal government and non-governmental entities

10.408 Grazing Association Loans—Direct financial assistance between the Federal government and non-governmental entities

10.410 Low to Moderate Income Housing Loans—Direct assistance to individuals

10.417 Very Low-income Housing Repair Loans and Grants—Grants to Individuals

10.421 Indian Land Acquisition Loans—Direct financial assistance between the Federal government and non-governmental entities

10.428 Economic Emergency Loans—Direct loan to individuals and other non-governmental entities

Federal Crop Insurance Corporation

10.450 Federal Crop Insurance—Direct payment to individuals, payment of claims under contract, and direct financial assistance between the Federal government and the individual

Food Safety and Inspection Service

10.477 Meat and Poultry Inspection—Foreign Commerce Inspection, no financial assistance

Food and Nutrition Service

10.551 Food Stamp Program (Coupons)—The Food Stamp Program is an entitlement program and benefits are provided directly to individuals

Forest Service

10.652 Research grants and Cooperative Agreements—Direct finacial assistance between the federal government and a non-governmental entity

Forest Service research activities as follows: Research, development, and demonstration programs or activities.

Fire and Atmospheric Sciences Research

Forest Insect and Disease Research

Renewable Resources Evaluation Research

Renewable Resources Economics Research

Surface Environment and Mining Research

Trees and Timber Management Research

Watershed Management Research

Wildlife, Range, and Fish Habitat Research

Forest Recreation Research

Forest Products Utilization Research

Forest Engineering Research

National Forest Systems Activities as follows: Funds are distributed by formulas that are established by laws, and federal agencies have no authority to approve specific sites or projects where funds will be issued

10.665 Schools and Roads—Grants to States

10.666 School and Roads—Grants to Counties

10.667 School Funds—Grants to Arizona

10.668 Additional Lands—Grants to Minnesota

National Forest System Activities—Land management practices involved with the administration and protection of resources on National Forest System lands, which are not direct development

Negotiations of involved and sensitive land exchanges or purchases which would be endangered or hampered with premature release of appraisal figures, resulting in adverse effects of local land speculation

Programs with characteristics inappropriate for coverage. For example, assistance to educational institutions regarding fire prevention and soil and water conservation

Projects which are of small scale or size, are highly localized as to impacts, or display other characteristics which make review impractical

National Agriculture Library

10.700 National Agriculture Library—No financial activity outside of Headquarters

Packers and Stockyard Administration

10.800 Livestock and Poultry Market Supervision—Investigation of complaints—applied research in Market operations—funding arrangements with State universities

Rural Electrification Administration

10.850 Rural Electrification Loans and Loan Guarantees to non-governmental entities

10.851 Rural Telephone Loans and Loan Guarantees—to non-governmental entities

10.852 Rural Telephone Bank Loans—Direct financial assistance between the Federal government and a non-governmental entity

Soil Conservation Service

10.900 Great Plans Conservation Program (GPCP)—Technical and financial assistance to individual land users

10.902 Soil and water conservation—assistance to individuals

10.903 Soil Surveys (Land Grant Universities only)—Soil survey research and the field collection of data is accomplished by Federal and Land Grant University personnel. Final decisions affecting the integrity of studies are based on National needs and technical criteria

10.905 Conservation Operations Plant Materials Centers—All operations are internal to the agency and plants developed are released through universities

Conservation Operations—technical assistance—Technical assistance to individual land users, including Indians

Conservation Operations—Inventory and monitoring—Program consists of data collection using a nationwide sample frame. Final decision affecting the integrity of studies are based on National needs and technical criteria

10.907 Conservation Operations—snow surveys and water forecasting—Program is data collection program from multistate sample frame. Data deals with water content of snow pack in the western mountain States. Stream flows result in water being used in a number of States before reaching the ocean. Final decisions affecting the integrity of studies are based on National needs and technical criteria.

10.908 Inventory and monitoring—dissemination of technical information

10.910 Rural Abandoned Mine Program—Direct payment for specified use

Statistical Reporting Service

10.950 Crop and Livestock Estimates—Federal statutory preemption precludes any State or local jurisdiction over this program, and the recommendation of State and local governments can have little or no bearing on Federal decisions in this area. Meaningful consultation would breech the confidentiality required by Federal statute (18 U.S.C. 1902) relating to the disclosure of crop information

10.950 Statistical Research and Service—Research, development and demonstration program, and direct financial assistance between the Federal government and a nongovernmental entity

John J. Franke, Jr.,

Assistant Secretary for Administration.

June 14, 1983.

[FR Doc. 83-18730 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-KS-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR 3015

Department of Agriculture Proposal To Exclude the Cooperative Extension Service Program From Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule related notice.

SUMMARY: This notice proposes that Cooperative Extension Service programs not be subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Elsewhere in today's **Federal Register**, the Department is publishing a list of programs subject to this Executive Order. Public comment is sought on this proposed exclusion.

DATES: Comments must be received on or before September 22, 1983.

ADDRESS: Interested persons should submit comments to Ms. Lyn Zimmerman, Office of Finance and Management, USDA, Room 10–A, Administration Building, Washington, D.C. 20250. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 10–A, Administration Building Washington, D.C. 20250 (telephone (202) 382–1553).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1983, the Department indicated in a Notice of Proposed Rulemaking (48 FR 3082) that the Department intended to include the Cooperative Extension Service programs (CES) in its list of programs that would be subject to the provisions of Executive Order 12372 and the Department's implementing rules for that Executive Order.

This proposed inclusion produced over 850 letters and other communications, virtually all of which objected to the inclusion of the Cooperative Extension Service. In response to these comments, the Department is now proposing the exclusion of CES programs. Public comment is sought on this proposed exclusion.

The Department is publishing elsewhere in today's **Federal Register** a final rule and several notices related to the final rule. The final rule sets forth the Department's responsibilities with regard to Executive Order 12372 and the opportunities being given to State and local officials for intergovernmental consultation and program review.

Until the comment period on this notice ends and the Department subsequently determines whether to exclude or include CES programs, the programs are not eligible for selection under a State process.

Summary of the Comments

The commenters gave various reasons why the program should be excluded. Over 700 commenters said that including the program would disrupt an efficient State and local process, and add excessive and duplicative review requirements to an already effective system of planning. Over 200 commenters asserted that inclusion would subject a program to an unnecessary and inappropriate political process. Over 250 commenters suggested that program inclusion would cause taxes to be raised, because of the increased costs of unnecessary paperwork and added regulations. Over 170 commenters felt that the Smith-Lever Act already provides a legally constituted review and funding process for CES programs. Additionally, over 40 commenters argued that as the Cooperative State Research Service was excluded, so also the CES should be excluded. Nearly 250 commenters said that bureaucracy would expand and overall operational efficiency would be reduced if the program was included. Approximately 33 commenters stated that the Department had no funding discretion or direct authority over the program, and thus the program met the criteria for exclusion. About 250 commenters asserted that CES already had enough reviewing bodies. Nearly 35 commenters believed the Order and the rules would generate conflict between State and local governments, thus causing confusion and disrupting a vital service. There were 270 commenters who felt the Order interfered with a well accepted system of local and State determination of program operations. Over 200 commenters insisted that the present system is working well and should not be changed. Numerous other commenters voiced fears that the proposed inclusion of the CES program was but a preliminary step to converting the program into a block grant and reducing its funds. Still other commenters objected to any inclusion because they understood that the Office of Management and Budget (OMB) was establishing a committee to oversee the direction and operation of the program.

Executive Order 12372 Policies

Many of the comments were based on a misunderstanding of the policies and procedures of the Executive Order. Many of the commenters also apparently did not have available to them a copy of either the Executive Order or the Department's proposed rule. Because of this, the Department believes it would be helpful as part of this notice to provide a brief summary of the Executive Order policies as they would be applied to the CES program if the program was excluded or included. This summary is set forth below in the form of questions and answers.

Q. What is the basic purpose of the Executive Order?

A. The Executive Order allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance. The Executive Order also seeks to increase Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not.

Q. If CES programs were subject to the Executive Order, must a State include them among the programs the State wishes to cover under its review and comment process?

A. No. While each Federal Agency identifies and lists those programs and activities subject to the Order, a State, after consulting with local officials, is free to select as many or as few programs and activities from this list as it wishes. A State could choose not to select CES programs.

Q. If CES programs were selected by a State, must State and local officials follow a Federally prescribed set of procedures when performing any review and comment?

A. No. State and local officials are free, for any selected program to continue existing consultation and review procedures, to modify these procedures, or to introduce new procedures where none previously existed. The choice and manner of this review is decided by the State, in consultation with local officials.

Q. If CES programs were selected, are States expected to change any existing review procedures for these programs?

A. There is no requirement that any existing procedures be changed. Change for the sake of change is not being sought, and a State may determine that the existing procedures are the most effective and efficient means for consultation and review and should be retained.

Q. If a State selects CES programs, but chooses to continue the existing procedures for review and consultation, what is the effect, if any, of the Executive Order?

A. There may be no effect. However, if State or local officials submit a State process recommendation containing their views on the program, the Department must accommodate those views or explain why not. If the officials do not provide a State process recommendation, then the Department must consider any comments they may have made, but need not accommodate them.

Q. If CES programs are not subject to the Executive Order, what policies regarding intergovernmental review and consultation will apply?

A. The Department anticipates there would be no change to the present policies regarding consultation and review. The Department periodically reviews these policies and may make changes in the future as are appropriate and necessary. (The present policies also would apply if a State chose not to select CES programs if the programs were subject to the Executive Order.)

Commenters may also wish to read the preamble to the Department's rule which describes in greater detail how the Executive Order's policies will be carried out.

Response to Comments

While the Department at this time does not wish to respond to the many comments that were received, there were two areas of comment received by both the Department and the Office of Management and Budget which appear to be the result of erroneous information. First, the Executive Order is not a step to converting CES programs into a block grant. Nor is the Order intended to be used as a basis for reducing program funds in the future. Second, the Office of Management and Budget has told the Department that there was, and is, no intention to create a Federal committee to oversee the direction and conduct of CES programs.

Next Steps

The Department is seeking public comment on whether CES programs should be excluded. The Department is doing so, in part, because comments endorsing the inclusion of any program or activity were not sought as part of the Notice of Proposed Rulemaking. The Department continues to welcome the views of those individuals and organizations who believe CES programs should be excluded.

Commenters who previously responded to the earlier Notice of Proposed Rulemaking published on January 24, 1983 (48 FR 3082) need not resubmit their comments. All comments received during the earlier comment period will continue to be considered.

The Department particularly solicits comments that address the following questions:

What is the appropriate role of State and local elected officials in a review of a State CES plan, a county CES plan, or an application for CES funds?

How should the Department best satisfy the provisions of Section 401 of the Intergovernmental Cooperation Act of 1968, which requires the Department to consider State, regional, and local viewpoints whenever the Department assists in the sound and orderly development of smaller communities and rural areas, including consideration for the wise development and conservation of all natural resources?

Following the end of the comment period, the Department will study all comments received and make a determination on whether to exlcude or include CES programs. A notice will be published in the **Federal Register** announcing the determination.

Richard A. Ashworth

Special Assistant to the Deputy Assistant Secretary.

[FR Doc. 83-16731 Filed 6-23-83; 8:45 am]

BILLING CODE 4310-03-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1823, 1901, 1933, 1942, 1944, 1948 and 1980

Rescission of Regulations Involving Consultation With State and Local Governments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes regulations involving OMB Circular A-95 consultation with State or local agencies or officials and implements Executive Order (E.O.) 12372. A final rule pertaining to that Order is being published in the **Federal Register** simultaneously with this final rule. For a full understanding of this final action see the final rule, 7 CFR Part 3015, Subpart V, appearing in this Part III.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Warren B. Clayman, Environmental Specialist, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, Washington, D.C. 20250, telephone (202) 382-9626.

SUPPLEMENTARY INFORMATION: On January 24, 1983, FmHA published a Notice of Proposed Rulemaking, 48 FR 3091.

Note that the Water and Waste Disposal Loan and Grant Program and Community Facilities Loans, because of statutory language, will operate under the provisions of OMB Circular A-95 until the Consolidated Farm and Rural Development Act is amended.

Comments received from the public are responded to in the Department of Agriculture's final rule, 7 CFR Part 3015, Subpart V.

In the proposed rule, FmHA inadvertently failed to rescind "A-95" language from the Business and Industrial Loan Programs and Rural Housing Loan programs. Accordingly, Subparts D and E of Part 1980 are amended by removing the "A-95" language and substituting the following: "Intergovernmental Review of Department of Agriculture Programs and Activities;"

List of Subjects

CFR Part 1823

Loan programs—agriculture; Loan programs—housing and community development; Rural areas; Intergovernmental relations.

7 CFR Part 1901

Indians; Intergovernmental relations

7 CFR Part 1933

Grant programs—housing and community development; Indians; Low and moderate income housing; Rural housing; Intergovernmental relations.

7 CFR Part 1942

Business and industry; Grant programs—housing and community development; Rural areas

7 CFR Part 1944

Farm labor housing; Migrant labor; Public housing; Rent subsidies

7 CFR Part 1948

Business and industry; Community development and facilities; Energy; Housing; Planning; Transportation

7 CFR Part 1980

Loan programs—agriculture; Loan programs—business and industry—rural development assistance

For the reasons set out in 7 CFR 3015 Subpart V, Farmers Home Administration amends Chapter XVIII, Title 7 of the Code of Federal Regulations as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measures

1. Section 1823.229 is amended by adding paragraph (a)(4) to read as follows:

§ 1823.229 Coordination with State and local agencies.

* * * * *

(a) * * *

(4) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart H—A-95 Review, Evaluation, and Coordination of Projects

§ 1901.352 [Amended]

2. Section 1901.352 is amended by removing paragraphs (a)(2), (a)(4) through (a)(14) and (b); and redesignating paragraph (a)(3) as (a)(2) and paragraph (c) as (b) and paragraph (d) as (c).

§ 1901.355 [Amended]

Section 1901.355 is amended by removing paragraphs (a)(2)(vii) and (b), and redesignating paragraph (c) through (e) as (b) through (d), respectively.

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

4. § 1933.410 is amended by adding paragraph (d)(9) to read as follows:

§ 1933.410 Processing preapplications and applications and completing grant dockets.

* * * * *

(d) * * *

(9) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940-J, available in any FmHA Office.

PART 1942—ASSOCIATIONS

Subpart G—Industrial Development Grants

§ 1942.302 [Amended]

5. Section 1942.302 is amended by removing paragraphs (b) and (c) and redesignating paragraph (d) as (b).

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances.

§ 1942.402 [Amended]

6. Section 1942.402(b) is amended by removing the last sentence of this paragraph.

7. In Section 1942.412 paragraph (a)(1)(i) is revised to read as follows:

§ 1942.412 Preapplication and application processing.

(a) * * *

(1) * * *

(i) The County Supervisor or other person designated by the State Director may assist the applicant in completing Form AD-621, "Preapplication for Federal Assistance," and will forward one copy of Form AD-621 to the State Director.

* * * * *

§ 1942.412 [Amended]

8. Section 1942.412 (a)(1)(ii) is further amended by removing "and the State

clearinghouse" from the first sentence and ending this sentence after "SCS".

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

9. In Section 1944.164 paragraph (k) is revised to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(k) *International review.* Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" for 25 units or more. See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

10. Exhibit A–1 to Subpart D of Part 1944 is amended by removing the second undesignated paragraph in paragraph I, E, 2. and revising paragraph II.B. to read as follows:

Exhibit A–1 Information to be submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant.

* * * * *

II. * * *

B. If applicable, evidence of compliance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

11. In § 1944.215 paragraph (n) is revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(n) *Intergovernmental Review.* FmHA will give due consideration to any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" for 25 units or more. See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

§ 1944.523 [Amended]

12. Section 1944.523 is amended by removing "A–95 and" from the title of this section; by removing paragraphs (a)(1), (a)(2), and (b); and by redesignating paragraph (a) as the introductory paragraph of § 1944.523, and paragraphs (a)(3) and (a)(4) as paragraphs (a) and (b), respectively.

§ 1944.526 [Amended]

13. Section 1944.526 (c)(2) is amended by substituting in the first sentence of the paragraph "including any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" (See FmHA Instruction 1940–J, available in any FmHA Office.) for "including A–95 comments received".

14. In Section 1944.529 paragraph (b)(9) is revised to read as follows:

§ 1944.529 Project selection.

* * * * *

(b) * * *

(9) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

15. In Section 1944.531 paragraph (c)(3) is revised to read as follows:

§ 1944.531 Application submission.

* * * * *

(c) * * *

(3) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

Exhibit B [Amended]

16. Exhibit B to Subpart K of Part 1944 is amended by removing paragraph B.2 and designating the unnumbered second paragraph which begins with "The State Office will refer * * *" as paragraph B.2.

Exhibit C [Amended]

17. Exhibit C to Subpart K of Part 1944, paragraph B is amended by removing the first sentence.

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

§ 1948.66 [Reserved]

18. Section 1948.66 is removed and reserved.

19. In Section 1948.78 paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h) and paragraph (f) if revised to read as follows:

§ 1948.78 Growth management and housing planning projects.

* * * * *

(f) Governors should give full consideration to local and substate priorities in the development of the State Investment Strategy for Energy Impacted Areas.

* * * * *

20. Section 1948.79, paragraph (b) and (k)(3) are revised to read as follows:

§ 1948.79 Application procedure for planning grants.

* * * * *

(b) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture office."

* * * * *

(k) * * *

(3) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

§ 1948.80 [Amended]

21. Section 1948.80 is amended by substituting in paragraph (g) "received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" (See FmHA Instruction 1940–J, available in any FmHA office.)" for "from the A–95 clearinghouse(s)."

22. Section 1948.84, paragraphs (c) and (i)(2) are revised to read as follows:

§ 1948.84 Application procedure for site development and acquisition grants.

* * * * *

(c) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

(i) * * *

(2) Any comments received in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities". See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

PART 1980—GENERAL

Subpart A—General

§ 1980.6 [Amended]

23. Section 1980.6 is amended by removing paragraph (a)(1) and redesignating paragraph (a)(2) through (a)(16) as (a)(1) through (a)(17), respectively.

§ 1980.40 [Amended]

24. Section 1980.40 is amended by removing "State and sub-State clearinghouse" after "Applicant's Environmental Impact Evaluation," in the second sentence of this section.

Subpart C—Emergency Livestock Loans

25. Section 1980.207 is amended by revising the introductory paragraph to read as follows:

§ 1980.207 *Definitions.*

The following general definitions are applicable to this Subpart. Additional definitions may be found in § 1980.6 of Subpart A of this Part, except that those contained in § 1980.6(a)(1), (3), (6), (8), (12), and (13) are not applicable to cases in which a lender requests a Contract of Guarantee.

* * * * *

Subpart D—Rural Housing Program Loans

26. § 1980.317 is revised to read as follows:

§ 1980.317 Intergovernmental review.

When the preapplication or application involves a loan or loans in a subdivision of 10 or more new dwelling units in which HUD, VA, or FmHA has not previously made, insured, or guaranteed a housing loan, the lender will see that the requirements of 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" are complied with. See FmHA Instruction 1940–J, available in any FmHA office.

Subpart E—Business and Industrial Loan Programs

27. § 1980.451 (d)(3) and (f)(8) are revised to read as follows:

1980.451 Filing and processing applications.

* * * * *

(d) * * *

(3) In assigning priorities to applications and in selecting projects for funding FmHA will consider State development strategies.

* * * * *

(f) * * *

(8) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

* * * * *

Authority: E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperative Act of 1968 (42 USC 4231(b)).

Dated: June 13, 1983.

Michael E. Brunner,

Associate Administrator, Farmers Home Administration.

[FR Doc. 83-16732 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

36 CFR Parts 219 and 251

Rescission of Regulations Involving Consultation With State and Local Governments

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final regulation is to notify interested persons of those provisions of regulations involving consultation with State and local agencies or officials which will no longer be needed when regulations implementing Executive Order (E.O.) 12372 are put into effect. A notice of final rulemaking pertaining to that Order is being published in the **Federal Register** simultaneously with this final rule. A full understanding of the action contained here may be gained by referring to that final rule, 7 CFR Part 3015, Subpart V.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: David R. Wallace, Administrative Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013 (Telephone 202–447–8456).

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3092), a proposed rule was published which listed CFR Parts affected by E.O. 12372. No comments were received that opposed this rule.

List of Subjects

36 CFR Part 219

Environmental impact statements, National forests, Public lands—classification.

36 CFR Part 251

Electric power, Environmental protection, Mineral resources, Rights-of-way, Water resources, Watershed, Public land—acquisition and exchange.

For the reasons set out in 7 CFR 3015, Subpart V, the Department amends the following regulations:

PART 219—[AMENDED]

1. In 36 CFR 219.7, the first sentence of paragraph (b) is revised to read as follows:

§ 219.7 Coordination with other public planning efforts

* * * * *

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico).* * *

PART 251—[AMENDED]

§ 251.54 [Amended]

2. In 36 CFR 251.54, paragraph (f)(2) is amended by removing "OMB Circular A–95."

Dated: June 16, 1983.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 83-16733 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-11-M

Food and Nutrition Service

7 CFR Parts 225, 227, 235, 246, 247, 250 and 253

Rescission of Regulations Involving Consultation with State and Local Governments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule deletes the provisions of regulations involving consultation with State and local agencies or officials which will no longer be needed with the implementation of Executive Order (EO) 12372. A final rule is being published in the **Federal Register** simultaneously with this rule. A full understanding of the action contained here may be gained by referring to that final rule, 7 CFR Part 3015, Subpart V.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Vicky Urcuyo, Assistant to the Deputy Administrator for Special Nutrition Programs (telephone (703) 756–3054).

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3093) a proposed rule was published which listed the CFR Parts affected by EO 12372. General comments received on the impact of EO 12372 and the implementing regulations are discussed along with the final rule, 7 CFR 3015, Subpart V.

Some specific comments on the proposed amendements to Parts 253 and 227 were received. With regard to Part 253, the question was raised whether the retention of the requirement for submission to the Indian Tribal Organization (ITO) of a plan of operation, budget or subsequent amendment at least 45-days prior to the submission to FNS was consistent with the Executive Order. This provision is designed to give ITOs an opportunity to comment on the plan prepared by a State agency which operates a food distribution program for the Tribe. As such it is not inconsistent with the Executive Order. The Amendment to Part 253 was included in this regulation simply to remove the reference to the Governor's Clearinghouse, thus making the rule consistent with the rescission of A-95.

Also, comments were made concerning the proposed amendments to Part 227. One commenter recommended the revision of subsection 227.30(a) rather than its removal. The commenter pointed out that provisions of the Office of Management and Budget (OMB) Circular A-102 still apply to the program. We concur with this recommendation; however, the subsection has been revised to reference the provisions of the Departmental Regulation 7 CFR 3015. This regulation stipulates the applicable provisions of the OMB circulars as well as additional Departmental requirements.

Two commenters objected to the deletion of § 227.37(b)(6). One commenter recommended the retention of the State level advisory council. This is contrary to Section 2(f) of EO 12372. A State agency may decide to continue such a council but for the Department to require a council would be in violation of the Executive Order. The other commenter recommended retention of the legislatively required solicitation of advice and recommendations for various professionals and interested parties. We concur with this recommendation. The section will be retained with the deletion of the reference to State level advisory councils.

List of Subjects

7 CFR Part 225

Food Assistance program, Grant programs-health, Infants and children; Reporting and recordkeeping requirements

7 CFR Part 227

Education, Grant programs-health, Infants and children, Nutrition

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure

7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance program, WIC, Women

7 CFR Part 250

Aged; Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

For the reasons set out in 7 CFR 3015, Subpart V, the Department is amending the following regulations:

Part and Title

225 Summer Food Service Program
227 Nutrition Education and Training Program
235 State Administrative Expense Funds
246 Special Supplemental Food Program for Women, Infants and Children
247 Commodity Supplemental Food Program
250 Food Distribution Program
253 Food Distribution Program on Indian Reservations

Part 225—[AMENDED]

§ 225.6 [Amended]

1. 7 CFR 225.6, paragraphs (c), (d), and (e) are removed and paragraphs (f) and (g) are redesignated as § 225.6 (c) and (d) respectively.

PART 227—[AMENDED]

§ 227.30 [Amended]

2. 7 CFR Part 227.30(a) is amended by removing the words "Office of Management and Budget (OMB) Circular A-102 and Circular A-95, Part III" and inserting in lieu thereof "the Departmental regulations 7 CFR 3015."

§ 227.31 [Amended]

3. 7 CFR Part 227.31, paragraph (c) is amended by removing the fourth and fifth sentences.

§ 227.37 [Amended]

4. 7 CFR Part 227.37(b)(6) is amended by removing the words "establish and description of the functions of a State level advisory council which solicits" and insert in lieu therof "solicit".

PART 235—[AMENDED]

§ 235.4 [Amended]

5. 7 CFR 235.4(d) is amended by removing the fourth and fifth sentences.

PART 246—[AMENDED]

§ 246.4 [Amended]

6. 7 CFR 246.4, paragraph (c) is removed and paragraphs (d) and (e) are redesignated as § 246.4 (c) and (d) respectively

CFR 246.4, newly redesignated paragraph (c) is amended by removing the last sentence.

PART 247—[AMENDED]

§ 247.5 [Amended]

8. 7 CFR 247.5, paragraph (c) is removed and paragraphs (d) and (e) are redesignated as § 247.5(c) and (d) respectively.

PART 250—[AMENDED]

§ 250.6 [Amended]

9. 7 CFR 250.6, introductory paragraph (f) is amended by removing the fifth and sixth sentences.

10. 7 CFR 250.6(w) (3) is removed.

PART 253—[AMENDED]

11. 7 CFR 253.5, paragraph (a) (1) (ii) is revised to read as follows:

§ 253.5 State agency requirements.

(a) Plan of operation.

(1) * * *

(ii) A State agency which is not an ITO shall submit its plan of operation, budget and any substantive subsequent amendments to the ITO for comment at least 45 days prior to submission of the plan, budget or amendment to FNS. Comments by the ITO shall be attached to the plan, budget or amendment which

is submitted to FNS. This paragraph does not apply to amendments required by FNS under § 253.7(a)(1).

* * * * *

PART 246—[AMENDED]

§ 246.2 [Amended]

12. In 7 CFR Part 246.2, the definition of "A-95" is removed.

PART 247—[AMENDED]

§247.2 [Amended]

13. In 7 CFR Part 247.2, the definition of "A-95" is removed.

(Executive Order 12372, July 14, 1982, 47 FR 30959, SEC 401(b) of the Intergovernmental Cooperation Act of 1968, (42USC 5231 (b))

Dated: June 14, 1983.

John H. Stokes III,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83-16734 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 282

[Amendment No. 255]

Food Stamp Program: Rescission of Regulations Involving Consultation with State and Local Governments.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Stamp Program regulations, published November 21, 1978 (43 FR 54215), to delete the reference to OMB Circular A-95, Evaluation, Review and Coordination of Federal and Federally-Assisted Programs and Projects. This action is being taken to implement regulations implementing Executive Order (E.O.) 12372. Final rules pertaining to that order are being published in the **Federal Register** simultaneously with this final rule. A full understanding of the action contained here may be gained by referring to that rule, 7 CFR Part 3015, Subpart V.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Branch Chief, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Food and Nutrition Service, Alexandria, Virginia 22302, Telephone (703) 756-3425.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3093), a proposed rule was published which listed the CFR Part affected by E.O. 12372. General comments received on the impact of E.O. 12372 and the implementing regulations are discussed along with the final rule in 7 CFR 3015, Subpart V.

Four comments were received in connection with the proposed rule. Two were from regional commissions, one was from a State office and one was from a Food and Nutrition Regional Office. None opposed the proposed rule of January 24, 1983.

List of Subjects in 7 CFR Part 282

Food stamps, Government contracts, Grant programs-Social programs, Research.

Amendment

For the reasons set out in 7 CFR 3015, subpart V, Part 282 of Subchapter C, Chapter II of Title 7, Code of Federal Regulations, is amended as follows:

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

1. s282.4 is amended by revising paragraph (a) to read as follows:

s282.4 Approval of proposals.

(a) *Presubmission proposal review.* All suggestions for project operations and formal proposals for such operations shall be subject to the application procedures contained in OMB Circular A-102.

* * * * *

(E.O. 12372 (July 14, 1982, 47 FR 30959); s401(b) Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: June 14, 1983.

John H. Stokes III,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83-16735 Filed 6-23-83; 8:45 am]

BILLING CODE 3410-30-M

federal register

Friday
June 24, 1983

Part IV

Department of Commerce

Office of the Secretary

Intergovernmental Review of the Department of Commerce Programs and Activities; Final Rule and

Intergovernmental Review of Federal Programs Under Executive Order 12372; Commerce Programs Subject to the Order; Notice

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Parts 303, 307, and 309

15 CFR Parts 13, 905, 920, 921, 923, 930, 931, 932, 933 and 2301

50 CFR Part 401

[No. 30608-105]

Intergovernmental Review of the Department of Commerce Programs and Activities

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Commerce. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Barry Bird, Office of General Counsel, 202-377-3084.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3096), the Department of Commerce, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order (the Department also published a technical correction to the NPRM on March 1, 1983, 48 FR 8484). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 11 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a Senate hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wished to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order also provides that states must consult with local government in establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in

reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed throught the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency will then provide the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As the phrase suggests, there is to be only one "single point of contact." The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, area wide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus,—i.e., the unanimous recommendation of the commenting parties—or areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation. A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs and activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
13.1	13.1.
13.2	13.2.
13.3	13.3.
13.4	13.4.
13.5(a)	13.6(b).
13.5(b)	13.6(d).
13.5(c)	13.6(c).
13.6(a)	13.8(b).
13.6(b)	13.8(a).
13.6(c)	Deleted.
13.6(d)	13.9.
13.7(a)	13.10(a).
13.7(b)	13.10(b), (c).
13.8	13.11.

Portions of the final rule not listed in this table (§§ 13.5, 13.6(a), 13.7, and 13.8(c)) are new.

Section 13.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act (31 U.S.C. 6506) as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. (42 U.S.C. 334). (The text of sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of USDA's document)).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also ensure that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local

levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 13.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "unusual circumstances." With respect to this term, the dangers of overinclusiveness and underinclusiveness is particularly great. The purpose of providing discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use this provision sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 13.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 13.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to § 13.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in

metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule in order to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 13.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 13.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to ensure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 14.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 13.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 13.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 13.7, discussed below.

Section 13.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activites subject to the Order that are covered by a state process. This pragraph is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an

affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 13.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 13.6(b) of the NPRM (redesignated § 13.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters), except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including notice of any adjustment to the comment period that may be necessary, to directly-affected state, areawide, regional and local entities concerning the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 13.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (d) of § 13.6 of the NPRM has been droppped. A new § 13.9 of the final rule describes how the Secretary receives and responds to comments.

Section 13.9 How does the Secretary receive and respond to comments?

This new section replaces § 13.6(d) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 13.6(d) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 13.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state

and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve—or undesirable to attempt—consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 13.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for submission of comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 13.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there

will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurrs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 13.11 What are the Secretary's obligations in interstate situations?

This section is based on § 13.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or expain that recommendation as well.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" rule, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that

a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

In addition to general comments regarding the scope of the Executive Order addressed in the section-by-section analysis to § 13.3 above, the Department received 11 comments on particular Commerce programs which the commenters believed should or should not be eligible for state selection. While one commenter recommended that certain programs deemed eligible for state selection should be excluded from coverage and another supported the Department's list of excluded programs, other commenters recommended that the Department exclude fewer programs from eligibility for state selection. In part, we believe these commenters did not understand the limited nature of the Department's exclusions.

In determining which programs are subject to E.O. 12372, the Department has, as one commenter suggested, been guided by section 1 of E.O. 12372. All Commerce programs which directly affect state and local governments, or for which state and local governments provide the non-Federal matching share, are eligible for selection. While the phrase "directly affects" can mean different things to different people, the Department has attempted to be overinclusive rather than underinclusive. All of the Commerce programs currently covered by OMB Circular A-95 are eligible for selection by the states. Several other programs not covered by A-95 are also eligible for selection. EDA's Business Development Program (CFDA #11.301) which provides loans and guarantees is eligible, as in NOAA's Intergovernmental Climate Program (#11.428). Certain other programs are also eligible which were not covered by A-95 to the extent that the applicant is a state or local government. These programs are NOAA's Sea Grant Support Program (#11.417), Financial Assistance for Marine Pollution Research (#11.426), and Fisheries Development and Utilization Research and Development (#11.427); and MBDA's minority business programs (#11.800).

NOAA Programs

Several commenters submitted comments about programs of the National Oceanic and Atmospheric Administration (NOAA). One commenter suggested that the Sea Grant Support Program (#11.417) and Marine Pollution Research (#11.426) should be totally excluded from coverage under E.O. 12372, instead of partially excluded as proposed. Because state and local governments are eligible to apply for assistance under the programs, the Department believes they must be eligible for state selection when the applicant is a state or local government. This commenter also suggested that the Department should exclude the Intergovernmental Climate Program (#11.428); another commenter suggested the program should be included. Because this program directly affects state and local governments, it is clearly covered by E.O. 12372.

Two commenters requested the Department to include NOAA's Sea Grant Program (#11.417), the Marine Pollution Research Program (#11.426), and the Fisheries Research Program (#11.427). These programs generally involve research performed by non-governmental entities (which includes universities and colleges) outside the scope of the Order. Because state and local governments may legally apply for assistance under these programs, however, these programs are included when the applicant is a state or local government agency and states may request to review such applications under their E.O. 12372 process. One commenter also requested the Department to include two NOAA programs which provide assistance to compensate fishermen for losses incurred when their vessels are seized or damaged by foreign vessels or foreign countries (#11.409, 11.410). The Department will exclude these programs because they do not directly affect state or local governments and are outside the scope of the Order.

MBDA Programs

Four commenters requested the Department to include the programs of Minority Business Development Agency (MBDA) (#11.800). These programs are designed to provide minority business with management and technical services which may prove useful in increasing their competitiveness. The Department is excluding these programs because they do not directly affect state and local governments. Because assistance is occasionally awarded to agencies of state and local governments to provide services to minority business, however, states may select to review applications when the applicant is a state or local government agency.

EDA Programs

Two commenters requeste the Department to include economic development programs involving awards to Indian tribes. The Department has proposed to exclude the Economic Development Administration's (EDA) grant programs insofar as they involved Indian tribes. Because the Order applies to activities which directly affect State and local governments, the Department is excluding these programs when the applicant is an Indian tribe. If a particular project to an Indian tribe may have substantial impact outside the reservation which directly affects a state or local government's interests, the Department intends to review the

potential impact on a case-by-case basis and will request the applicant to submit the application to E.O. 12372 review if appropriate. Further, if a state law or other special circumstances require a state to receive notification of applications of Indian tribes, upon request, EDA will notify the state process.

Several commenters requested the Department to include the EDA Technical Assistance Program (#11.307). EDA may extend assistance under the Program to public and private entities. The Department has included this program when the assistance is provided to state and local governments or when assistance is extended to conduct research into economic development problems with a local focus which may affect state or local interests. Because EDA may also extend technical assistance to private entities for business-related projects such as preparation of a marketing study or provision of management assistance, the Department believes that any effect on state and local governments would be indirect and outside the scope of the Order. (Projects involving loan and guarantee assistance to private firms under the Business Development Program CFDA #11.301, which may involve a local matching share requirement, are eligible for state selection).

Other Programs

One commenter requested the Department to include the National Telecommunications and Information Administration's Public Telecommunications Facilities Program (#11.550). Another requested the Department to exclude the Program. Because this program requires NTIA applicants to work with the appropriate state agency, it directly affects the state government and is subject to the Order. Accordingly, the Department has included this program and states may choose to select it for review under the state process. (The Public Telecommunications Services Program, #11.551, referred to by two commenters is no longer in operation.)

Another commenter requested the Department to include the activities of the National Bureau of Standards (#11.601, 11.603, 11.604). Inasmuch as these activities involve various types of research and do not have any unique geographic focus or impact they do not directly affect state and local governments and are outside the scope of the Order.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of data.

List of Subjects in 15 CFR Part 13

Intergovernmental relations.

1. For the reasons set out in the Preamble, the Department of Commerce amends Title 15, Code of Federal Regulations, by adding a new Part 13, to read as follows:

TITLE 15—[AMENDED]

PART 13—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF COMMERCE PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

§ 13.1 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 13.2 Definitions.

"Department" means the U.S. Department of Commerce.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Commerce or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 13.3 Programs and activities of the Department subject to the regulations.

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 13.4 General responsibilities under the Order.

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct

federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 13.5 Obligations with respect to federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 13.6 State selection of programs and activities.

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 13.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 13.7 Communication with state and local officials concerning the Department's programs and activities.

(a) For those programs and activities covered by a state process under § 13.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process. This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

§ 13.8 Opportunity to comment on proposed federal financial assistance and direct federal development.

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities at least:

(1) 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 13.9 Receipt of and response to comments.

(a) The Secretary follows the procedures in § 13.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 13.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 13.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 13.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 13.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 13.12 [Reserved]

§ 13.13 [Reserved]

2. The Secretary also removes the following regulations which implement OMB Circular A-95:

TITLE 13—[AMENDED]

PART 309—[AMENDED]

§ 309.17 [Removed]

(a) 13 CFR is amended by removing §309.17.

TITLE 15—[AMENDED]

PART 905—[REMOVED]

(b) 15 CFR is amended by removing Part 905.

3. The Secretary amends the following regulations to conform them to the changes made above:

TITLE 13—[AMENDED]

PARTS 303 AND 307—[AMENDED]

§§ 303.4-3 and 307.53 [Amended]

(a) 13 CFR is amended by removing §303.4-3(b)(5)(i), § 303.4-3(d)(4)(i), and § 307.53(b)(1).

TITLE 15—[AMENDED]

PARTS 920, 921, AND 923—[AMENDED]

§§ 920.53, 920.55, 920.58, 920.59, 920.61, 921.14, 923.92, 923.95, 923.98 [Amended]

(b)(1) 15 CFR 920.53(b) is amended by removing the phrase "OMB Circular A-95, under * * *" so that the sentence reads, "Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absence of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperation Act of 1968." The last sentence is removed.

(2) 15 CFR 920.55(b) is amended by substituting the phrase "E.O. 12372" for the phrase "OMB Circular A-95" in the first sentence. The remainder of (b) is removed.

(3) 15 CFR 920.58(a) and 920.59(a) are amended by revising the third sentence to read, "An intergovernmental review process, if one is established by the state pursuant to E.O. 12372, should be followed."

(4) 15 CFR 920.61(d), 920.61(f), 923.95(a), and 923.98(c) are amended by substituting the phrase "Executive Order 12372" wherever those sections contain reference to "Office of Management and Budget Circular Number A-95", "OMB Circular A-95 (revised)", or "A-95."

(5) 15 CFR 921.14(c) is amended by removing the phrase "appropriate state and regional A-95 clearinghouses" and substituting the phrase "any other agency or office which may be identified by the State if the State has established an intergovernmental review process pursuant to E.O. 12372" in the first sentence. The last sentence is removed.

(6) 15 CFR 923.92(b)(3) is amended by removing the phrase "OMB Circular A-95, under * * *" so that the sentence reads, "Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absence of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperative Act of 1968."

(7) 15 CFR 923.95(b) is amended by removing the last sentence.

PARTS 930, 931, 932 AND 933—[AMENDED]

§§ 930.35, 930.54, 930.61, 930.93, 930.94, 930.95, 930.96, 930.98, 931.36, 931.50, 931.77, 931.91, 931.92, 932.42, 933.42 [Amended]

(c)(1) 15 CFR 930.35(b) and 930.54(a) are amended by substituting the phrase "Intergovernmental Review Process established pursuant to E.O. 12372" for the phrase "OMB Circular A-95 review" or "A-95 review."

(2) 15 CFR 930.61(c)(3) is amended by removing the phrase "A-95 public notices."

(3) 15 CFR 930.93 is revised to read as follows:

§ 930.93 Intergovernmental Review Process.

The term "Intergovernmental Review Process" describes the procedures established by states pursuant to Executive Order 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(4) Former 15 CFR 930.94 is redesignated as new 15 CFR 930.95 and 930.95 as redesignated is amended as follows:

(i) 15 CFR 930.95(a) is amended by removing in the first sentence the phrase, "to assist A-95 state and areawide clearinghouses."

(ii) 15 CFR 930.95(c) is amended by removing the phrase, "and to the A-95 state and areawide clearinghouse."

(5) Former 15 CFR 930.95 is redesignated as new 15 CFR 930.94 and is revised to read as follow:

§ 930.94 State Intergovernmental Review Process for Consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(6) 15 CFR 930.96(a), 930.96(b) and 930.98(a) are amended by substituting the phrase "Intergovernmental Review Process" for the phrase "OMB A-95 process" wherever it occurs.

(7) 15 CFR 930.96(b) is amended by removing the word "clearinghouse" and substituting "state agency".

(8) 15 CFR 930.98(a) is amended by removing in the first sentence the phrase "the appropriate clearinghouse" and adding the phrase "any other agency or office which may be identified by the state in its Intergovernmental Review Process pursuant to Executive Order 12372." In the last sentence the phrase "clearinghouse and other" is removed so that the sentence reads as follows: "State agencies must inform the parties * * *".

(9) 15 CFR 931.36(b)(2), 931.50(c)(4), 931.77(c)(4)(v) and 931.77(c)(5) are removed. 15 CFR 931.36(b) (3) and (4) are redesignated as 931.36(b)(2) and 931.36(b)(3), respectively.

(10) 15 CFR 931.91 is amended by removing the phrase, "A-95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects' (FR 2052, Jan. 13, 1976) and" so that the sentence reads, "Administrative procedures for grants and credit assistance are based to the maximum extent practicable upon the Office of Management and Budget Circular A-102 "Uniform Administrative Requirements for Grants-in-Aids to State and Local Governments' (34 CFR Part 256).

§ 931.92 [Removed]

(11) 15 CFR 931.92 is removed.

(12) 15 CFR 932.42(a) is amended by substituting in the first sentence the phrase "E.O. 12372" for the phrase "Part I, Attachment A of OMB Circular A-95 (revised)". The remainder of the section is removed.

(13) 15 CFR 932.42(c) and 933.42(b) are amended by substituting the phrase "E.O. 12372" wherever they refer to "Office of Management and Budget Circular A-95," or "A-95."

(14) 15 CFR 933.42(a) is amended by substituting in the first sentence the phrase "E.O. 12372" for the phrase "OMB Circular A-95 (revised)."

PART 2301—[AMENDED]

(d) 15 CFR § 2301.8 is amended by revising paragraph (e) to read as follows:

§ 2301.8 Service of applications.

* * * * *

(e) The State office established to review applications under Executive Order 12372, if the State has established such an office and wishes to review these applications.

TITLE 50—[AMENDED]

PART 401—[AMENDED]

(e) 50 CFR § 401.5 is revised to read as follows:

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

Dated: June 17, 1983.

Malcolm Baldrige,

Secretary of Commerce.

[FR Doc. 83-16718 Filed 6-23-83; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

Intergovernmental Review of Federal Programs Under Executive Order 12372; Commerce Programs Subject to the Order

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of Commerce programs subject to the Order.

SUMMARY: In the final rules section of this issue of the **Federal Register** the Department is publishing its final regulations establishing new procedures for providing for intergovernmental review of its programs and activities as required by E.O. 12372. Under the new procedures, states are given flexibility to select which programs of the Department they want to review through the state E.O. 12372 process. This notice informs state and other interested individuals and organizations of the Commerce programs which are within the scope of E.O. 12372 and eligible for selection by the states.

FOR FURTHER INFORMATION CONTACT: Barry Bird, Office of General Counsel, 202–377–3084.

SUPPLEMENTARY INFORMATION: Section 1 of Executive Order 12372 requires the Department to provide opportunities to elected officials of state and local governments to consult on proposed federal financial assistance or direct federal development if the federal activity directly affects them or if they provide non-federal funds for the activity. The Executive Order and the Department's implementating regulations allow states to establish a state process to provide for that consultation and to select which Federal programs subject to section 1 of the Order they wish to cover by their process. This notice lists the programs at the Department which are subject to E.O. 12372 ("Included Programs"). The Department published a list of Commerce programs not subject to the Order in conjunction with the proposed rule (January 24, 1983, 48 FR 3101).

States may select (or not select) any of the included programs for review through the state process. As noted in the preamble to the final rule, states must send the initial list of selected Commerce programs to the Office of Management and Budget. Subsequently, states must send changes to the states list directly to the agencies affected (e.g., EDA) or to the Department's Office of Intergovernmental Affairs, U.S. Department of Commerce, Washington, D.C. 20230.

One of the changes made in the final regulations was to add provisions to implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334). This section applies to programs for projects or activities located in metropolitan areas which involve assistance for carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply or distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects. Programs at the Department which may involve projects subject to the requirements of section 204 of this Act and the relevant provisions in the Commerce final regulations implementing E.O. 12372 are marked with and asterisk (*).

In developing the list of Commerce programs subject to E.O. 12372, the Department has attempted to implement the requirements of section 1 of the Order fully. All Commerce programs which affect state and local governments directly or for which state and local governments supply the non-Federal share of funds have been included. Because several statutes administered by Commerce allow the Department to extend assistance to both public and private entities, however, some programs may be subject to the Order but only when the applicant is a state or local government. For example, the Economic Development Administration may extend technical assistance to various public and private entities. To the extent such assistance is extended to a state or local government it is clearly within the scope of the Order. To the extent the assistance is extended to a private business (to fund, for example, marketing studies or to provide management and operational assistance) and does not involve unusual aspects which directly affect a state or local government, it is not covered by the Order. Accordingly, certain programs listed below are only partially included. (Numbers refer to location in the Catalogue of Federal Domestic Assistance. For purposes of this notice, all universities and colleges are deemed nongovernmental.)

The Department would point out that every Commerce program currently subject to OMB Circular A–95 is eligible for state selection under the E.O 12372 procedures. In addition, two programs are eligible which were not subject to A95—CFDA #11.301 (Economic Development Business Development) and #11.428 (Intergovernmental Climate Program). Several other programs which were not subject to A–95 are partially included insofar as assistance is extended to state and local governments. These programs are #11.417 (Sea Grant Support), #11.426 (Marine Pollution Research), #11.427 (Fisheries Development and Utilization Research and Development) and #11.800 (Minority Business Development Assistance).

Included Programs

*11.300 Economic Development—Grants for Public Works and Development Facilities
11.301 Economic Development—Business Development Assistance
*11.302 Economic Development—Support for Planning Organizations
*11.303 Economic Development—Technical Assistance (when the application is by or for the benefit of a state or local government)
*11.304 Economic Development—Public Works Impact Projects
*11.305 Economic Development—State and Local Economic Development Planning
*11.306 Economic Development—District Operational Assistance
*11.307 Special Economic Development and Adjustment Assistance Program Long-Term Economic Deterioration
11.405 Anadromous and Great Lake Fisheries Conservation (except for research projects involving nongovernmental entities)
11.407 Commercial Fisheries Research and Development
11.417 Sea Grant Support (state and local government applicants)
*11.419 Coastal Zone Management Program Administration
11.420 Coastal Zone Management Estuarine Sanctuaries
*11.421 Coastal Energy Impact Program—Formula Grants
*11.422 Coastal Energy Impact Program—Planning Grants
*11.423 Coastal Energy Impact Program—Loans and Guarantees
*11.424 Coastal Energy Impact Program—Environmental Grants
*11.425 Coastal Energy Impact Program—Outer Continental Shelf State Participation Grants
11.426 Financial Assistance for Marine Pollution Research (state and local government applicants)
11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program (state and local government applicants)
11.428 Intergovernmental Climate Program
11.550 Public Telecommunications Facilities
11.800 Minority Business Development—Management and Technical Assistance (state and local government applicants)

Dated: June 17, 1983.

Malcolm Baldrige,

Secretary of Commerce.

[FR Doc. 83–16717 Filed 6–23–83; 8:45 am]

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federal register

Friday
June 24, 1983

Part V

Department of Defense

Office of the Secretary and Corps of Engineers, Department of the Army

Intergovernmental Coordination of DOD Federal Development Programs and Activities; Final Rule and

Intergovernmental Review of the Department of the Army Corps of Engineers Programs and Activities; Final Rule and

List of Programs Subject to Executive Order 12372, Intergovernmental Review of Federal Programs; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 243

[DoD Directive 4165.61]

Intergovernmental Coordination of DOD Federal Development Programs and Activities

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule implements E.O. 12372, "Intergovernmental Review of Federal Programs." The rule applies to federal development programs and activities of the Department of Defense. E.O. 12372 and this rule are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: This rule is effective September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Colonel Michael D. Davies, USA, Office of Economic Adjustment, Rm. 3D968, Pentagon, Washington, D.C. 20301, tel. (202) 697-3006.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3106) the Department of Defense, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out E.O. 12372 or notices proposing that their programs not be subject to the Order. Later, two more agencies published NPRMs, bringing to 28 that total number of proposals subject to public comment. The Department of Defense, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

The Department of Defense received no comments specifically related to the inclusion or exclusion of DoD programs from the coverage of the Order or other issues pertaining only to the Department of Defense.

However, following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department of Defense has made several changes from the proposed rule. The Department of Defense is fully committed to carrying out E.O. 12372, and intends through this rule to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date gives state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the E.O. on April 8, 1983, extending the effective date of this final rule until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed E.O. 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the E.O. are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The E.O.:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increase federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the E.O. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the E.O. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under that state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The E.O. provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescription gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the E.O. and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except OMB Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968. The intergovernmental consultation provisions of OMB Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to appropriate federal agencies.

The federal agency provides the state process with notice of proposed action for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point to contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate to explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the federal government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodation or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, that is, nonaccommodation.

If there is nonaccommodation, the Department of Defense is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus, that is, the unanimous recommendation of the commenting parties, of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Format Change From NPRM

To facilitate implementation by the DoD Components, maintain consistency with the previous DoD regulation on intergovernmental coordination of DoD land and facility, and allow incorporation of internal instructions the unique format of the NPRM is changed to the DoD standard in this final rule. The provisions of the NPRM, as changed in consultation with the other agencies and the April 8 amendment to the E.O., are contained in this regulation.

Appendices

Appendices may be changed without rulemaking but will be published as notices in the **Federal Register.**

List of Subjects in 32 CFR Part 243

Federal financial assistance; Federal development programs; Intergovernmental relations.

Accordingly, 32 CFR is amended by revising Part 243, reading as follows:

PART 243—INTERGOVERNMENTAL COORDINATION OF DOD FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

Authority: E.O. 12372 (July 14, 1982; 47 FR 30959); section 401(b) of Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(b)).

§ 243.1 Purpose.

This rule under E.O. 12372 and 31 U.S.C. Section 6506 et seq. updates policies, assigns responsibilities, and prescribes procedures for an intergovernmental process to assist coordination of appropriate DoD federal development programs and activities in the United States with state and local governments and federal agencies, and to encourage state and local governments and federal agencies to coordinate their programs and activities with the Department of Defense.

§ 243.2 Applicability and Scope.

(a) This rule applies to the Office of the Secretary of Defense, the Military Departments (excluding the civil works function of the U.S. Army Corps of Engineers) and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Neither E.O. 12372 nor this rule are intended to create any right or benefit enforceable at law by a party against the Department of Defense or its officials.

(c) This rule covers all programs and activities developed by DoD Components for military construction (as defined in DoD Instruction 7040.4), acquisition of real property, substantial changes in existing use of military installations and real property, and disposal of real property that may affect state and local government or other federal agency community development programs and activities, and state, local, and other federal agency programs and activities that may affect DoD activities.

(d) A list of the DoD programs and activities subject to E.O. 12372 is at appendix A. An illustrative list of other federal programs and activities that may affect the Department of Defense is at appendix B.

§ 243.3 Definition.

State. Any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 243.4 Policy.

It is the policy of the Department of Defense to promote an intergovernmental partnership and a

strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed DoD federal development; and to encourage the opportunity to review other agency programs and activities that may affect the Department of Defense.

§ 243.5 Responsibilities.

(a) The *Executive Secretary to the Secretary of Defense*, having been designated by the Secretary of Defense as the DoD intergovernmental coordination point of contact, shall act as the focal point for all matters relating to E.O. 12372.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD(MRA&L)) shall develop policy and shall: (1) Have overall management responsibility for intergovernmental coordination of DoD federal development programs and activities, (2) Monitor the implementation of E.O. 12372 within the Department of Defense.

(c) The *Heads of DoD Components* shall:

(1) Establish and maintain an intergovernmental coordination management process concerning DoD federal development programs and activities described in appendix A.

(2) Monitor the application of policies, responsibilities, and procedures contained in this rule within their subordinate elements.

(3) Designate an official to be the point of contact for intergovernmental coordination and review matters covered by this rule and report his or her name, position, and office to the ASD(MRA&L).

(4) Develop procedures that will ensure that a record of state comments, reviews, determinations, recommendations, and the status of programs and activities are maintained.

(5) Designate an official, in accordance with appendix C, who shall serve as a DoD liaison representative to the states in the respective federal regions for all DoD intergovernmental coordination matters. The identification of the liaison representatives shall be provided to the ASD(MRA&L) who shall publish a directory of liaison representatives in the **Federal Register**. The liaison function shall be in addition to the representative's regular duties.

§ 243.6 Procedures.

DoD Components shall establish and maintain an intergovernmental coordination management process, reflected in a cooperative agreement when feasible, to achieve full consultation with state, regional, and local entities for those programs and activities covered by this rule. DoD Components shall encourage reciprocal actions with regard to the state, regional, and local programs and activities.

(a) DoD Components shall establish and maintain an inter-agency coordination management process to ensure their development programs and activities are consistent and compatible with the development actions of federal agencies operating at the local levels. DoD Components shall encourage reciprocal actions by other federal agencies with regard to their programs and activities. Unresolved conflicts shall be brought to the attention of the ASD(MRA&L).

(c) DoD Components that conduct activities or operate installations that may be affected by the programs and activities of federal agencies shall take part in the community planning process by providing information, policy, and position statements on those programs and activities to the agencies concerned.

(d) The degree of public interest in a proposed program or activity shall be considered when deciding whether the Congress and the public shall be notified before offering information for comment as prescribed in this rule.

(e) In an emergency, provisions of this rule may be waived by the Secretary of the Military Department concerned. Such instances will be reported to the ASD(MRA&L).

(f) This rule does not affect normal cooperative community planning or coordination relationships between DoD installations and surrounding communities.

(g) Further procedures for DoD federal development programs are prescribed at appendix D.

Note.—Appendices A–D will not be published in the Code of Federal Regulations.

Appendix A—DoD Programs and Activities Included Under This Rule

1. Installation comprehensive master planning
2. Military construction
3. Family housing
4. Real property acquisition and disposal
5. Withdrawals of public domain land for military use
6. Substantial changes in existing use of installations
7. Notices of intent, findings of no significant impact, and draft and final environmental impact statements (EIS) (as part of the standard process)
8. Air installation compatible use zone (AICUZ) studies
9. Natural resource plans
10. Floodplain management and wetlands protection
11. Appropriate information and data for regional plans, programs, and projects.

Appendix B—Examples of Federal Programs and Activities That May Affect the Department of Defense

1. Environmental impact assessments and statements
2. Noise abatement and control
3. Coastal zone management
4. Areawide waste treatment management
5. Recreation
6. Fish and wildlife conservation
7. Air quality
8. Flood control
9. State and regional transportation
10. State and regional land use
11. Energy facility siting
12. FHA and VA mortgage insurance
13. Historic preservation
14. Primitive and wilderness area management

Appendix C— DoD Liaison Representatives for Intergovernmental Coordination of DOD Federal Development Programs and Activities

Standard Federal Regions	Component Furnishing Representative
I Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	Air Force.
II New Jersey, New York, Puerto Rico, Virgin Islands.	Army.
III Delaware, Maryland, Pennsylvania, Virginia, West Virginia.	Navy.
IV Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	Navy.
V Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	Air Force.
VI Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Air Force.
VII Iowa, Kansas, Missouri, Nebraska	Army.
VIII Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	Air Force.
IX American Samoa, Arizona, California, Northern Mariana Islands, Guam, Hawaii, Nevada, Trust Territory.	Navy.
X Alaska, Idaho, Oregon, Washington	Army.

Appendix D—Procedures for DoD Federal Development Programs and Activities

A. General.

1. *State Selection of Programs and Activities.*

a. A state may select any program or activity listed in appendix A of this rule for intergovernmental review. Each state, before selecting programs and activities, will consult with local elected officials.

b. Each state that adopts a process will notify the DoD liaison representative for the federal region in which that state is located of DoD programs and activities selected for that process.

c. A state may notify the liaison representative of changes in its selections at any time. For each change, the state will submit an assurance that the state has consulted with elected local officials regarding the change. The DoD Components may establish deadlines by which states are required to inform them of changes in their program selections.

d. DoD Components shall use a state's process as soon as feasible after notification of the state's selections.

2. *Communication with State and Local Officials.*

a. For those programs and activities covered by a state process, the DoD Components shall (1) use the official state process to determine views of state and local elected officials; and (2) communicate with state and local elected officials, through the official state process as early in a program planning cycle as is reasonably feasible to explain specific plans and actions (see section C., below).

b. DoD Components shall provide notice to directly affected state, areawide, regional, and local entities in a state of proposed DoD federal development if (1) the state has not adopted an official process; or (2) the development involves a program or activity not selected for the state process. This notice may be made by publication in the Federal Register or other appropriate means.

3. *Opportunity To Comment.*

a. Except in unusual circumstances, DoD Components shall give state processes 60 days from the date established by the Component to comment on DoD federal development programs and activities.

b. Subsection A.3. also applies to comments in cases in which the state has delegated the review, coordination, and communication responsibilities.

4. *Receipt of and Response To Comments.*

a. DoD Components shall follow procedures in subsection A.5., below if (1) a state office or official is designated to act as a single point of contact (SPOC) between a state process and all federal agencies; and (2) that office or official transmits a state process recommendation for a selected program.

b. The SPOC is not obligated to transmit comments from state, areawide, regional, or local officials and entities when there is no state process recommendation.

c. If a state process recommendation is transmitted by a SPOC, all comments from state, areawide, regional, and local officials and entities that differ from it will also be transmitted.

d. If a state has not established a review process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments directly to the DoD Component.

e. If a program or activity is not selected for a state review process, state, areawide, regional, and local officials and entities may submit comments directly to the DoD Component. In addition, if a state process recommendation for a nonselected program or activity is transmitted by the SPOC to the DoD Component, the Component shall comply with subsection A.5., below.

f. DoD Components shall consider comments which do not constitute a state process recommendation and for which the Component is not required to comply with subsection A.5., below, when such comments are provided by a SPOC or directly by a commenting party.

5. *Accommodation of Intergovernmental Concerns.*

a. If a state process provides a state process recommendation to a DoD Component through its SPOC, the Component either (1) accepts the recommendation; (2) reaches a mutually agreeable solution with the state process; or (3) provides the SPOC with a written explanation of the decision.

b. In any explanation, the SPOC shall be informed that (1) the decision will not be implemented for at least 10 days after the SPOC receives the explanation; or (2) the Secretary of the Military Department or Director of the Defense Agency concerned has reviewed the decision and determined that because of unusual circumstances the waiting period of at least 10 days is not feasible.

c. For purposes of computing the waiting period, a SPOC is presumed to have received written notification 5 days after the date of mailing of such notification.

6. *Obligations in Interstate Situations.*

DoD Components shall:

a. Identify DoD federal development that has an impact on interstate areas.

b. Notify appropriate officials and entities in states that have adopted a process and selected the particular program or activity.

c. Make efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process or selected the particular program or activity.

d. Respond to subsection A.5., above, if a recommendation is received from a designated areawide agency transmitted by a SPOC when the state has delegated the review, coordination, and communication responsibilities.

e. Use the procedures in subsection A.5., above, if a state process provides a state process recommendation through a SPOC.

7. *Memoranda of Understanding.*

The Department of Defense shall use cooperative agreements in the form of memoranda of understanding with states having a process to establish the information to be submitted to the SPOCs and the timing of the submittals. DoD Components shall contact their DoD liaison representatives to identify the SPOCs with whom the agreements shall be made. When it is determined that an agreement is practical, all DoD Components that have a presence in the state shall become parties to the agreement whenever possible. When such agreements are used, the content shall be uniform and shall be consistent with the policies and procedures contained in this Directive. Cooperative agreements that predate this Directive may continue in force until revised and shall be the basis for new agreements.

8. *Records.*

DoD Components shall maintain, as part of the records of each review, the comments received from all sources together with the status of the review.

9. *Information To Be Provided.*

The specific information to be provided to the states or federal agencies depends on the particular plan or project and must be determined by each DoD Component. Information normally available for construction projects such as site location, scope of work, type of construction and description of work, together with necessary site plans shall be provided. Normally, justification or rationale for the project in question shall not be furnished.

10. *Requests for Information.*

Requests for additional information from the public shall be handled in accordance with Parts 286 of this title and DoD Instruction 5400.10. If a request for additional information is refused, the requestor shall be informed in writing, with appropriate explanation, and the response placed in the record.

11. *Classified Information.*

Classified information shall not be provided to any non-DoD entity that does not have the authority to receive it.

12. *Review of Other Programs and Activities.*

Although a program or activity may not be included in the scope of this Directive, the DoD Component may still provide the public the opportunity to have its views considered. Many statutes involving DoD activities have their own consultation requirements and the DoD Components shall comply with them.

13. *National Capital Region.*

DoD Components responsible for federal development in the National Capital Region (as defined in the National Capital Planning Act of 1952) shall coordinate with the National Capital Planning Commission.

B. *Scope.*

1. *Programs and Activities To Be Reviewed.*

There are no minimum quantitative levels that can be used to determine whether comments shall be sought on a specific program or activity. Repair, maintenance, and rehabilitation projects are excluded from the scope of this Directive unless they result in a substantially changed capacity or function of facilities that could affect non-DoD entities. The following types of programs and activities are to be considered for inclusion:

a. Appropriate portions of the Military Department-approved installation master plans (such as land use plans) developed in accordance with DoD 4270.1–M.

b. Air Installation Compatible Use Zone (AICUZ) studies developed in accordance with part 248 of this title.

c. Military construction included in the budget fiscal year DoD military construction program that may affect community development, especially as regards utilities, transportation, and schools.

d. Real property acquisition projects approved by the Military Department concerned or included in the current fiscal year DoD military construction that may affect community development plans.

e. Military Department-approved programs and activities that change substantially the use of military installations and real property and may affect community development plans.

f. Real property disposal projects that may affect community development plans.

2. *Responsibility for Community Impact Determination.*

The DoD Component concerned shall make the judgment whether a particular program or activity affects community development plans.

3. *Other Review Requirements.*

The procedures contained in this Directive are in addition to compliance with the

requirements of the National Environmental Protection Act, and Federal Water Pollution Control Act.

C. *Scheduling of notification.*

Subject to provisions of other statutory and regulatory requirements, DoD Components shall offer their programs and activities for review at the planning stages indicated below.

1. *Installation Master Plans.*

The military installation master plan as described in DoD 4270.1–M shall be offered upon approval by the Military Department concerned. Significant changes to the installation master plan shall also be submitted for review. The intent of the review is to allow local officials to evaluate the impact of land and facility use on their own development plans. It will also help the review of later annual construction and real property acquisition and disposal projects.

2. *Military Construction.*

Information on military construction shall be submitted after approval of a design planning directive for project development to be accomplished either in-house or by contract. In the latter case, the information normally shall be provided upon the architect-engineer selection for project development as announced in the Commerce Business Daily. Substantive changes in project development shall be considered for additional review. Information may be provided to the states before transmission of a project to the Congress so care must be taken to ensure the year of funding and estimated project cost are not made public. On verification that a project is included in the budget fiscal year DoD military construction program submitted to Congress, additional information and documentation on the project (that is, DD Forms 1391) may be provided for review if it is consistent with the submission to the Congress. Proposed major military construction projects included in the Five-Year Defense Program shall not be provided to the states individually or collectively except as described above. DoD Components shall continue to comply with DoD Directive 6015.17 for military health facility projects. Each DD Form 1391 for projects covered by this Directive shall include a statement explaining the status of the intergovernmental review.

3. *Real Property Acquisition.*

Real property acquisition projects shall be submitted only upon verification that the project has been approved by the Secretary of the Military Department concerned, or, if congressional approval is required, only after the Congress has been notified of the project. In exceptional cases, this provision may be waived by the ASD(MRA&L). When real property acquisition is part of a military construction project, the acquisition may be coordinated as part of that project even though the above events have not occurred.

4. *Mission Realignments.*

Plans and projects that may change substantially the use of military installations and real property and may affect non-DoD facilities, services, and activities, shall be submitted only after approval by the head of the DoD Component concerned and, if congressional notification of the plan or action is required, only after the Congress has been officially notified.

5. *Real Property Disposal.*

Real property disposal projects that require prior Congressional approval shall be submitted only after required DoD screening has been completed and the disposal report required by 10 U.S.C. 2662 has been cleared by the Congress. In exceptional cases, this procedure may be waived by the ASD(MRA&L) to allow release for review at the time the disposal report is submitted to the Congress.

D. *DoD Federal Region Liaison Representatives* shall:

1. Serve as the ASD(MRA&L)'s local representatives.

2. Establish and maintain liaison with SPOCs in their regions to determine the state process for intergovernmental review, if one exists, and any special requirements or conditions.

3. Pursue cooperative agreements with the states by means of memoranda of understanding that specify the programs to be included and the process for review consistent with the policies and procedures of this Directive.

4. Keep the DoD Components within their regions informed of intergovernmental review activities.

5. To the extent possible, resolve intergovernmental review issues among DoD Components within their regions. If resolution is not possible at the regional level, submit the matter to the ASD(MRA&L).

6. Keep the ASD(MRA&L) informed of events, experiences and problem areas so that the DoD intergovernmental review process may be improved.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1983.

[FR Doc. 83-17070 Filed 6-23-83; 8:45 am]

BILLING CODE 3810-01-M

Engineer Corps; Department of the Army

33 CFR Part 384

Intergovernmental Review of the Department of the Army Corps of Engineers Programs and Activities

AGENCY: Corps of Engineers, Department of the Army.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the U.S. Army Corps of Engineers. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A–95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Wolff, Assistant Chief, Planning Division, Directorate of Civil Works, Office of the Chief of Engineers (DAEN–CWP), Wash, DC 20314 (202) 272–0146.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3111), the Corps of Engineers, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Corps of Engineers, in conjunction with the other 27 federal agencies and OMB, published a notice in the Federal Register on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies and which were also incorporated in the Corps of Engineers' rulemaking docket, the Corps of Engineers received approximately 160 comments on government-wide issues during the comment period. In addition, the Corps of Engineers received 2 comments specifically related to the inclusion or exclusion of the Corps of Engineers' programs from the coverage of the Order or other issues pertaining only to the Corps of Engineers.

In preparing the final rule, the Corps of Engineers considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Corps of Engineers has made several changes from the proposed rule. The Corps of Engineers is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective of April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they

wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Corps of Engineers' existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered, and responded to, by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal agency is generally required to wait 15 days after sending an

explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Corps of Engineers altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
384.1	384.1.
384.2	384.2.
384.3(a)	384.3.
384.3(b)	384.7(a).
384.4	384.4 (Reserved).
384.5(a)	384.6(b).
384.5(b)	384.6(d).
384.5(c)	384.6(c).
384.6(a)	384.8(b).
384.6(b)	384.7(a).
384.6(c)	384.8(a).
384.6(d)	Deleted.
384.6(e)	384.9.
384.7(a)	384.10(a).
384.7(b)	384.10(b), (c).
384.8	384.11.
384.9 (Reserved)	384.12 (Reserved).
384.10	384.13.

Portions of the final rule not listed in this table (§§ 384.5, 384.6(a), 384.7(b), and 384.8(c)) are new.

Section 384.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. This statute, as amended, reads as follows:

BILLING CODE 3710-92-M

"Title IV-Coordinated Intergovenmental Policy Administration of Development Assistance Programs.

"Section 401. Development Assistance.

"(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

"(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development, (including programs and projects providing assistance to the States and localities) to serve most effectively the basic objectives of subsection (a) of this section.

The regulation shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

"(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

"(2) wise development and conservation of all natural resources.

"(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

"(4) adequate outdoor recreation and open space.

"(5) protection of areas of unique natural beauty and historic and scientific interest.

"(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

"(7) concern for high standards of design.

"(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

"(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environment.

"(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall, consult with and seek advice from all other significantly affected executive agencies in an effort to assure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

"(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

"(g) The President may designate an executive agency to prescribe regulations to carry out this action."

BILLING CODE 3110-01-C

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this Section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Corps of Engineers responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Corps of Engineers, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Corps of Engineers and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Corps of Engineers is stating only that these regulations are not grounds or judicial review of agency action beyond those afforded by the underlying statutes.

Section. 384.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Corps of Engineers does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Corps of Engineers would not use the term in any but its commonly understood sense.

The Corps of Engineers chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Corps of Engineers also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Corps of Engineers expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Corps of Engineers also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 384.10. In this section, the Corps of Engineers accepts the state process recommendation or reaches a mutually agreeable solution. If the Corps of Engineers does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Corps of Engineers believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Corps of Engineers considered whether to include a definition of the term "state process recommendation." The Corps of Engineers concluded that a definition of this term would not materially help clarify those situations in which the Corps of Engineers has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 384.3 What programs and activities of the Corps of Engineers are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

To provide information on the activities and programs eligible for

selection for state processes, the Corps of Engineers is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Corps of Engineers will seek public comment on proposed future program or activity exclusions as these occur.

Section 384.4 What are the Corps of Engineers' general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 384.5 What is the Corps of Engineers' obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Corps of Engineers and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Corps of Engineers believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Corps of Engineers is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Corps of Engineers regarding programs and activities covered under these regulations.

Section 384.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by section 384.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Corps of Engineers believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Corps of Engineers does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 384.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Corps of Engineers with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Corps of Engineers to establish deadlines for states to inform the Corps of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make on short notice midstream changes in coordination procedures. In addition, the Corps of Engineers has made some editorial changes for better clarity.

A listing of Corps of Engineers Division Engineers, and the States for which they are responsible for coordination of this regulation, is provided as Appendix A to this preamble.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 384.7, discussed below.

Section 384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?

Paragraph (a) incorporates material from §§ 384.3(b) and 384.6(b) of the NPRM, except that the final regulation specifies that the Corps of Engineers' obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Corps of Engineers will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Corps of Engineers must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Corps of Engineers may also take the initiative at any time to contact any interested person or entity about one of the Corps of Engineers programs or activities. Further, the Corps of Engineers need not rely on the state process or the single point of contact to bring about this communication or consultation.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Corps of Engineers communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Corps of Engineers will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Corps of

Engineers should be contacted for more information.

Section 384.8 How does the Corps of Engineers provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 384.6(c) of the NPRM (redesignated § 384.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Corps of Engineers has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Corps of Engineers will establish, by notice to the single point of contact or to directly affected entities, a date from which the 60 day comment period will begin to run. Where a program or activity is not selected for the state process, the Corps of Engineers will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted.

Paragraph (b) of this section is derived from § 384.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Corps of Engineers have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Paragraph (e) of § 384.6 of the NPRM has been dropped. A new § 384.9 of the final rule describes how the Corps of Engineers receives and responds to comments.

Section 384.9 How does the Corps of Engineers receive and respond to comments?

This new section replaces § 384.6(e) of the NPRM and elaborates in substantially greater detail the Corps of Engineers obligations concerning the receipt of and response to comments. Section 384.6(e) had provided that the Corps of Engineers would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Corps of Engineers' decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Corps of Engineers has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It is up to the state and local elected officials who establish each state process whether this single point of contact also has a substantive role in preparing comments.

Paragraph (a) obligates the Corps of Engineers to follow the "accommodate or explain" procedures of § 384.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. If these conditions are not met, the Corps of Engineers will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from the Federal Government. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Corps of Engineers will always fully consider all comments it receives under these regulations.

The Corps of Engineers' practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Corps of Engineer's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would

be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Corps of Engineers will respond as provided in § 384.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Corps of Engineers under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program as project will be seen and considered by the Corps of Engineers.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Corps of Engineers before the review and comment period ends. These entities may also choose to send their comments directly to the Corps of Engineers concurrently with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Corps of Engineers all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Corps of Engineers considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Corps of Engineers makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Corps of Engineers. The Corps of Engineers is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Corps of Engineers.

Paragraph (e) simply reiterates the Corps of Engineers obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Corps of Engineers. This obligation derives directly from section 401.

Section 384.10 How does the Corps of Engineers make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Corps of Engineers through a single point of contact, the Corps of Engineers becomes obligated to accommodate or explain. This means that the Corps of Engineers need not acccommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Corps of Engineers will fully consider all comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Corps of Engineers may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Corps of Engineers will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Corps of Engineers will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Corps of Engineers believes that to avoid unduly delaying the start of direct federal development, a longer period should not be provided. The Corps of Engineers believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Corps of Engineers has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Corps of Engineers has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Corps of Engineers sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Corps of Engineers will be free to begin carrying out its decision on the sixteenth day after the day the Corps of Engineers sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Corps of Engineers will make an effort to be as responsive as practicable consistent with the Corps of Engineers responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 384.11 What are the Corps of Engineers' obligations in interstate situations?

This section is based on § 384.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

The Corps of Engineers received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to

the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Corps of Engineers does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Corps of Engineers' interest to have affected states mutually agree on the Corps of Engineers' programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Corps of Engineers will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Corps of Engineers believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Corps of Engineers will make efforts to notify in interstate situations. OMB will periodically provide the Corps of Engineers with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Corps of Engineers if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Corps of Engineers, and that recommendation is transmitted to the Corps of Engineers through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Corps of Engineers is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Corps of Engineers would also accommodate or explain that recommendation as well.

Section 384.13 May the Corps of Engineers waive any provision of these regulations?

The provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Corps of Engineers is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Corps of Engineers uses the emergency waiver provision, the Corps of Engineers will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter which the waiver was used. In addition, the Corps of Engineers will keep records of all situations in which the emergency waiver was used, except in those cases of emergency actions under Pub. L. 84–99, which are categorically excluded in the regulation.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Corps of Engineers to which the Corps of Engineers would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Corps of Engineers wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Corps of Engineers' obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Corps of Engineers are responsible to the Secretary of the Army, who in turn is responsible to the President for carrying out important Administration policy on the Civil Works Program of the Corps of Engineers.

Finally a number of commenters reminded the Corps of Engineers and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Corps of Engineers will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Corps of Engineers will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Corps of Engineers will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, and coastal zone management, would be handled administratively under these regulations. Under the A–95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

Two commentors suggested that permit programs under the jurisdiction of the U.S. Army Corps of Engineers be included on the list of programs subject to E.O. 12372 and this regulation. As was pointed out in the preamble to the proposed rule, the regulatory programs

of the Corps of Engineers (Sections 9 and 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Ocean Dumping Act) do not constitute financial assistance or direct Federal development and are therefore not within the scope of the Order. We have reviewed our position in light of the two comments and have determined it to be correct; therefore, no changes have been made to the list of programs which is being published in the notice section of the **Federal Register.**

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Corps of Engineers has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Corps of Engineers and allow state and local governments to establish cost effective consultation procedures. For this reason, the Corps of Engineers believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Corps of Engineers certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of data.

Dated: June 17, 1983.

James W. Ray,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

List of Subjects in 33 CFR Part 384

Intergovernmental relations.

Appendix A—Listing of U.S. Army Corps of Engineers Division Engineers

Assignments for Coordination of State Processes Under E. O. 12372

Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road, Waltham, MA 02254—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Division Engineer, U.S. Army Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007—Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Virginia

Division Engineer, U.S. Army Engineer Division, South Atlantic, 510 Title Building, 30 Pryor Street SW., Atlanta, GA 30303—Alabama, Florida, Georgia, North Carolina, Puerto Rico, South Carolina, U.S. Virgin Islands

Division Engineer, U.S. Army Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201—Indiana, Kentucky, Ohio, Tennessee, West Virginia

Division Engineer, U.S. Army Engineer Division, North Central, 536 Clark Street, Chicago, IL 60605—Illinois, Iowa, Michigan, Minnesota, Wisconsin

Division Engineer, U.S. Army Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39180—Louisiana, Mississippi

Division Engineer, U.S. Army Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68144—Colorado, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming

Division Engineer, U.S. Army Engineer Division, Southwestern, 1114 Commerce Street, Dallas, TX 75242—Arkansas, New Mexico, Oklahoma, Texas

Division Engineer, U.S. Army Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208—Alaska, Idaho, Oregon, Washington

Division Engineer, U.S. Army Engineer Division, South Pacific, 630 Sansome Street, Room 1216, San Francisco, CA 94111—Arizona, California, Nevada, Utah

Division Engineer, U.S. Army Engineer Division, Pacific Ocean, Building 230, Ft. Shafter, HI 96858—American Samoa, Guam, Hawaii, Northern Mariana Islands, Trust Territory of the Pacific Islands

For the reasons set out in the Preamble, the Department of the Army, Corps of Engineers amends Title 33, Code of Federal Regulations, by adding a new Part 384, to read as follows:

PART 384—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

§ 384.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Corps of Engineers, and are not intended to create any right or benefit enforceable at law by a party against the Corps of Engineers or its officers.

§ 384.2 What definitions apply to these regulations?

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Responsible Corps official" means a District Engineer, Division Engineer, or the Chief of Engineers, or a designated representative, who is considering a decision or recommendation on a proposed Federal action and is responsible for coordinating such action with the state process under the provisions of this regulation.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 384.3 What programs and activities of the Corps of Engineers are subject to these regulations?

The Chief of Engineers publishes in the **Federal Register** a list of the Corps of Engineers Civil Works programs and activities that are subject to these regulations.

§ 384.4 [Reserved]

§ 384.5 What is the Corps of Engineers' obligation with respect to federal interagency coordination?

Responsible Corps officials, to the extent practicable, consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Corps of Engineers regarding programs and activities covered under these regulations.

§ 384.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 384.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the appropriate Division Engineer of the programs and activities selected for that process.

(c) A state may notify the appropriate Division Engineer of changes in its selections at any time. For each change, the state shall submit to the Division Engineer an assurance that the state has consulted with local elected officials regarding the change. The Division Engineer may establish deadlines by which states are required to inform the Corps of Engineers of changes in their program selections.

(d) The Corps of Engineers uses a state's process as soon as feasible, depending on individual programs and activities, after the Division Engineer is notified of its selections.

§ 384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?

(a) For those programs and activities covered by a state process under § 384.6, the responsible Corps official, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, throught the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The District Engineer provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the District Engineer in his discretion deems appropriate.

§ 384.8 How does the Corps of Engineers provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the responsible Corps official gives state processes or directly affected state, areawide, regional and local officials and entities at least 60 days from the date established by such official to comment on proposed direct federal development or federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Corps of Engineers have been delegated.

§ 384.9 How does the Corps of Engineers receive and respond to comments?

(a) The responsible Corps official follows the procedures in § 384.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 384.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the responsible Corps official by the single point of contact, such official follows the procedures of § 384.10 of this Part.

(e) The responsible Corps official considers comments which do not constitute a state process recommendation submitted under these regulations and for which such official is not required to apply the procedures of § 384.10 of this Part, when such comments are provided by a single point of contact or directly to such official by a commenting party.

§ 384.10 How does the Corps of Engineers make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Corps of Engineers through its single point of contact, the responsible Corps official either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as such Corps official in his or her discretion deems appropriate. The Corps official may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the responsible Corps official informs the single point of contact that:

(1) The Corps of Engineers will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) The Assistant Secretary of the Army (Civil Works), or the next higher level responsible Corps official, has reviewed the case and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 384.11 What are the Corps of Engineers obligations in interstate situations?

(a) The responsible Corps official is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Corps of Engineers program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select

the Corps of Engineers program or activity;

(4) Responding pursuant to § 384.10 of this Part if the responsible Corps official receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Corps of Engineers has been delegated.

(b) The responsible Corps official uses the procedures in § 384.10 if a state process provides a state process recommendation to such official through a single point of contact.

§ 384.12 [Reserved]

§ 384.13 May the Corps of Engineers waive any provision of these regulations?

(a) Emergency and disaster recovery actions performed under Pub. L. 99, 84th Congress, are excluded from the requirements of the Order and this regulation.

(b) In other emergencies, the Division Engineer may waive any provision of these regulations.

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DEPARTMENT OF DEFENSE

Department of the Army

List of Programs Subject to Executive Order 12372, Intergovernmental Review of Federal Programs

AGENCY: Corps of Engineers, Department of the Army.

ACTION: Notice.

SUMMARY: On January 24, 1983, the Corps of Engineers published a Notice of Proposed Rulemaking (NPRM) to carry out Executive Order 12372, Intergovernmental Review of Federal Programs (48 CFR 3111). As an appendix to the preamble of the NPRM, the Corps included a list of its programs and activities which would be covered by the Executive Order and the implementating regulations. Public comments was solicited on this list. The list is now being published as appendix to the notice rather than a part of the final rule so that changes can be made more conveniently (Appendix A). The Corps of Engineers will seek public comment on any future program or activity exclusions, as may be proposed in the future. The current list of programs includes all direct federal development and federal financial assistance activities of the Corps of Engineers Civil Works program, with the exception of emergency activities under Pub. L. 84-99, which are categorically excluded in the proposed and final rule. A discussion of comments received on the scope of programs included on the list may be found in the preamble to the final rule published this date in the **Federal Register** as 33 CFR 384.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Wolff, Assistant Chief, Planning Division, Directorate of Civil Works, Office of the Chief of Engineers (ATTN: DAEN-CWP), Washington, D.C. 20314, or one of the Division Engineers listed in Appendix B. to this notice.

EFFECTIVE DATE: September 30, 1983.

SUPPLEMENTARY INFORMATION: The Corps of Engineers currently coordinates its programs and activities with state and local officials based on number of federal statutes, Executive Orders and agency regulations. In addition, each district has the authority to develop and implement public involvement procedures, including coordination with state and local officials and agencies. These procedures will remain in effect if a state does not adopt a process under the provisions of 33 CFR 384, or if a state chooes not to select one or more of the listed Corps of Engineers programs for coverage under Executive Order 12372. If a State adopts a process and chooses to select one or more of the listed Corps of Engineers programs, district, and division engineers, and the Chief of Engineers, will modify their procedures to conform to those reflected in 33 CFR 384, to the extent necessary and permitted by law. State and local officials are encouraged to discuss with the appropriate Division Engineer the benefits and costs of covering each Corps of Engineers program under the Executive Order as opposed to continuing to rely on existing coordination procedures. In evaluating each program, States and local officials should understand that any existing procedures based on OMB Circular A-95 will not necessarily remain in effect after 30 September 1983.

Dated: June 17, 1983.

James W. Ray,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

APPENDIX A.—U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS PROGRAMS SUBJECT TO E.O. 12372

Program	Authority	Federal domestic assistance catalog
Direct Federal Development		
Planning, Design and Construction of Civil Works Projects Specifically Authorized by Congress.	Each study and project is specifically authorized by Congress	Not applicable.
Recreation Facilities at Completed Projects	Section 4, Pub. L. 78-534	Do.
Continuing Authorities Program: Planning, Design and Construction of Small Projects Not Specifically Authorized by Congress.		
• Snagging and Clearing for Flood Control (Section 208 Program)	Section (2, Pub. L.79-14, as amended	12.108.
• Snagging and Clearing for Navigation (Section 3 Program)	Section 3, Pub. L. 79-14	12.109.
• Emergency Streambank and Shoreline Protection of Public Works (Section 14 Program).	Section 14, Pub. L. 79-526, as amended	12.105.
• Flood Control (Section 205 Program)	Section 205, Pub. L. 80-858, as amended	12.106.
• Navigation (Section 107 Program)	Section 107, Pub. L. 86-645, as amended	12.107.
• Beach Erosion Control (Section 103 Program)	Section 103, Pub. L. 87-874, as amended	12.101.
• Mitigation of Shore Damage Attributable to Navigation Projects (Section 111 Program).	Section 111, Pub. L. 90-483, as amended	Not applicable.
Aquatic Plant Control	Section 104, Pub. L. 85-500, as amended	12.100.
Federal Financial Assistance (Technical Assistance)		
Planning Assistance to States (Section 22 Program)	Section 22, Pub. L. 93-251	12.110.
Floodplain Management Services Program (FPMS Program)	Section 206, Pub. L. 86-645	12.104.

Appendix B.—Listing of U.S. Army Corps of Engineers, Division Engineers

Assignments for Coordination of State Processes Under E.O. 12372

Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road Waltham, MA 02254	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Division Engineer, U.S. Army Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007	Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Virginia.
Division Engineer, U.S. Army Engineer Division, South Atlantic, 510 Title Building, 30 Pryor Street, S.W., Atlanta, GA 30303	Alabama, Florida, Georgia, North Carolina, Puerto Rico, South Carolina, U.S. Vegin Islands.
Division Engineer, U.S. Army Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201	Indiana, Kentucky, Ohio, Tennessee, West Virginia.
Division Engineer, U.S. Army Engineer Division, North Central, 536 Clark Street, Chicago, IL 60605	Illinois, Iowa, Michigan, Minnesota, Wisconsin.
Division Engineer, U.S. Army Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39180	Louisiana, Mississippi.
Division Engineer, U.S. Army Engineer Division, Missouri River, P.O. Box 103 Downtown Station, Omaha, NE 68144	Colorado, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.
Division Engineer, U.S. Army Engineer Division, Southwestern, 1114 Commerce Street, Dallas TX 75242	Arkansas, New Mexico, Oklahoma, Texas.
Division Engineer, U.S. Army Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208	Alaska, Idaho, Oregon, Washington.
Division Engineer, U.S. Army Engineer Division, South Pacific, 630 Sansome Street, Room 1216, San Francisco, CA 94111	Arizona, California, Nevada, Utah.
Division Engineer, U.S. Army Engineer Division, Pacific Ocean, Building 230, Ft. Shafter, HI 96858	American Samoa, Guam, Hawaii, Northern Mariana Islands, Trust Territory of the Pacific Islands.

[FR Doc 83-17072 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part VI

Department of Education

Office of the Secretary

Intergovernmental Review of the Department of Education Programs and Activities; Final Rule and Programs Subject to Executive Order 12372; Notice

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Parts 75, 76, and 79

Intergovernmental Review of the Department of Education Programs and Activities

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: These regulations implement Excecutive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs and activities of the Department of Education. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act to the extent those Acts apply to the Department's programs and activities.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. F. LeRoy Walser, U.S. Department of Education, Office of Intergovernmental and Interagency Affairs, Room 3073, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone Number: (202) 447-9043.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3120), the Department of Education, along with 25 other federal agencies, published a Notice of Proposed Rulemaking (NPRM) to carry out Executive Order 12372. subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment.

The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 39 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

To the extent permitted by statutes and regulations, allows states to simplify, consolidate, or substitute state plans; and

Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interest and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

A designated single point of contact;

Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

A means of consulting with local officials; and

A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact but commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or view may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed action under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed Rule	Final Rule
Section:	Section:
79.1	79.1.
79.2	79.2.
79.3(a)	79.3.
(b)	79.7(a).
79.4	79.4.
79.5(a)	79.6(b).
(b)	(d).
(c)	(c).
79.6(A)	79.8(b).
(b)	79.7(a).
(c)	79.8(a).
(d)	Deleted.
(e)	79.9.
79.7(a)	79.10(a).
(b)	(b), (c).
79.8	79.11.
79.9	79.12.
79.10	79.13.

Portions of the final rule not listed in this table (§§ 79.5, 79.6(a), 79.7(b), and 79.8(c)) are new.

Section 79.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing Section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement Section 204 of the Demonstration Cities and Metropolitan Development Act.

The text of Sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue of the **Federal Register** (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite Section 204 as authority as well as Section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. Section 79.1(b) adds mention of "areawide" entities in keeping with Section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local

levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on the one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 79.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans" or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions and exclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "unusual circumstances." With respect to this term the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in Section 79.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 79.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to § 79.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion. Other commenters supported the Department's exclusions and the criteria on which they were based.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the Federal Government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities

which are eligible for selection for a state process. Applications from nongovernmental entities are not covered under the Order, as noted in the published list of the Department's proposed exclusions. This generic exclusion has been made explicit in § 79.3.

Some commenters asked that specific programs of the Department be excluded or included under the Order. The Department has reviewed its proposed exclusions and inclusions in light of the Government-wide criteria used by all of the federal agencies in resolving these issues, and has made adjustments as necessary to ensure consistency of treatment among its programs.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing both the programs and activities included under the Order, and those that are excluded. Included programs to which Section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with triple asterisk (***). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently.

The Department will seek public comment on proposed future program or activity inclusions or exclusions as these occur.

Section 79.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 79.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 79.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 79.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the State submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 79.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make on short notice midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 79.7, discussed below.

Section 79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

The notice provided for by paragraph (b) of this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of Sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by

commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance. This notice may be either through publication (e.g., in an application notice in the **Federal Register**, or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 79.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance?

More commenters—over a third of the total—addressed § 79.6(c) of the NPRM (redesignated § 79.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes need to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, generally in the application notice published in the **Federal Register**, a date from which the 30 or 60 day comment period will begin to run. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustment to the comment period that may be necessary, to directly affected state, areawide, regional, and local entities regarding the proposed federal action. This notice would also generally be given in the published application notice. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that the state process is afforded adequate time to allow commenting parties to review and comment on the proposed federal financial assistance.

Paragraph (b) of this section is derived from § 79.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department will, to the maximum extent feasible, meet these concerns in setting the periods for completion of State process review of its programs and activities. In any case, the Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the applications.

Paragraph (e) of § 79.6 of the NPRM has been dropped. A new § 79.9 of the final rule describes how the Secretary receives and responds to comments.

Section 79.9 How does the Secretary receive and respond to comments?

This new section replaces § 79.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 79.6(e) of the NPRM had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 79.10 if two conditions are met. First, the state must have

designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Adminstration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives, whether submitted under these regulations or through other channels.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. Mr. President, However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in Section 79.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the states process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities if there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities if a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as Sections 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional, and local officials and entities, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from Sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies should not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind.

Section 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of this section provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However,

whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other communication in addition to the required written explanation) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in accordance with law and in a sound financial manner.

Section 79.11 What are the Secretary's obligations in interstate situations?

This section is based on § 79.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of the these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 79.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however, which were carefully considered in preparing the final regulations.

Several commenters were concerned that state plan consolidation would lead to a lack of federal monitoring and a substantial weakening of enforcement of state compliance with statutory and regulatory requirements. The Department wants to make it unequivocally clear that it will continue to require states to meet all federal statutory and regulatory requirements. The Department will not approve any plan that does not meet these requirements. Further, we will continue to monitor the states to assure that they implement their programs in compliance with those statutory and regulatory requirements. This provision does not permit states to ignore the requirements; it merely allows the States to use their own planning and budgeting processes to design plans that meet those requirements without detailed federal guidance that is not contained in applicable statutes or regulations. Any consolidated, simplified, or substituted state plan would be carefully reviewed to ensure that the plan meets all applicable statutory and regulatory provisions.

Several commenters believed that this provision would allow states to consolidate programs and commingle separate federal categorical program funds, and that this is simply an attempt to permit states to develop "block grants" without amending the underlying legislation. The Department emphasizes that states will not be allowed to consolidate programs or commingle funds (nor does it permit the states to shift federal funds from one program to another). This is not an attempt to provide informal "block grants". States must continue to meet program statutory and regulatory requirements governing the expenditure of federal funds for targeted groups of eligible people and the administration of categorical programs. This provision simply provides the states a greater opportunity to conduct planning across program lines to ensure the most

effective and efficient use of categorical federal funds (e.g., to identify gaps and overlaps in services).

A number of commenters questioned the advisability of permitting states to consolidate specific plans (i.e., education of handicapped children, rehabilitative services) with other plans. They recommended that these plans be excluded from the plan consolidation provisions of the Order. Their concerns included a fear that the programs would lose visibility, a belief that each program is so unique in its purposes and requirements that federal mandates cannot be met in a consolidated plan, skepticism that the states would in fact save any paperwork by consolidating plans, and the contention that states would not find it useful to consolidate plans.

The experience of the Department of Health and Human Services in its 10-state Planning Reform Project has demonstrated that: (a) federal statutory and regulatory planning requirements for diverse Federal programs can be met in consolidated plans; (b) inclusion in a consolidated plan provides an opportunity for the programs to increase their visibility because they can demonstrate to the governor, the legislature, and the general public that the services needed by their clients extend beyond the narrow federally-funded categorical program; (c) states were able to save paperwork and reduce federally-imposed administrative burdens (in several cases, states saved over 1,000 pages) simply by eliminating duplicative information and developing their own formats; and (d) the consolidated plans were more understandable and useful to governors, department directors, legislatures and the general public, because they contained more information in common taxonomies and formats.

However, the Department has determined, because of the concerns expressed by the commenters, not to include the state plan under Part B of the Education of the Handicapped Act under Section 79.12 of the regulations. If a decision were made at a later date to propose to add this or other state plans under the regulations, the Department would first publish a notice in the **Federal Register** asking for public comment.

For other state plan programs, the Department recognizes that since the requirements of the programs vary, and since the organizational structures and priorities vary among the states, plan consolidation may not be appropriate in a particular state, or, because of statutory or regulatory constraints, for a program in a particular year. For these reasons, we have left plan consolidation, substitution, and simplification for those programs at the option of the states, subject to any applicable statutory or regulatory restrictions.

One commenter recommended that the Department establish an appeals process under these regulations, to deal with situations in which the Department disapproves modified state plans. The Department believes that a new appeals process is not necessary, because the states can appeal any proposed disapproval through normal appeal mechanisms. In addition, before the Department would make a final determination to disapprove any plan, it would work with the states to resolve problems that impede approval.

Some concern was expressed about the statement in the preamble to the NPRM that the Secretary did not expect ever to have to disapprove a state plan. This statement was merely intended to underscore the Secretary's confidence, based on the Department's experience, that any differences with the states can be worked out, through negotiation, in accordance with all applicable statutory or regulatory requirements. The Department, and the Office of Education before it, has always been able to negotiate and approve state plans that meet all applicable legal requirements. These regulations have no effect on those requirements, and the Department is fully committed to enforce all existing statutory and regulatory requirements that apply to these state plans.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. In consultation with OMB and other federal agencies the Department has concluded that this recommendation should not be adopted because each federal agency must retain its existing authority and responsibility for approving state plans. However, the Department and other federal agencies will each designate an official to coordinate the provision of technical assistance to states on these matters. The Department will retain sole responsibility for reviewing, approving, and monitoring state plans under its programs, however. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats.

A list of state plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's **Federal Register** and will be updated periodically.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other general comments made to the Department. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations.

Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal

programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating the these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

(Catalog of Federal Domestic Assistance does not apply.)

Dated: June 16, 1983.

T. H. Bell,

Secretary of Education.

List of Subjects in 34 CFR Part 79

Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

1. The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 79 to read as follows:

PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334).

§ 79.1 What is the purpose of these regulations?

(a) The regulations in this Part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

(E.O. 12372)

§ 79.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Education.

"Order" means Executive Order 12372, issued July 14, 1982, amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

(E.O. 12372)

§ 79.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the **Federal Register** a list of the Department's program and activities that are subject to these regulations and identifies which of these are subject to the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act.

(b) Transactions with nongovernmental entities, including state postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by these regulations.

(E.O. 12372)

§ 79.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected official's concerns with proposed federal financial assistance that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

(E.O. 12372, Sec. 2)

§ 79.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the maximum extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

(E.O. 12372)

§ 79.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 79.3 for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

(E.O. 12372, Sec. 2)

§ 79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) [Reserved]

(b) (1) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(i) The state has not adopted a process under the Order; or

(ii) The assistance involves a program or activity not selected for the state process.

(2) This notice may be made by publication in the **Federal Register** or other means which the Secretary determine appropriate.

(E.O. 12372, Sec. 2)

§ 79.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to Section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(E.O. 12372, Sec. 2)

§ 79.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedure in § 79.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 79.6

(b) (1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities if there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 79.10.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 79.10 of this Part, if those comments are provided by a single point of contact, or directly to the Department by a commenting party.

(E.O. 12372, Sec. 2)

§ 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of the notification.

(E.O. 12372, Sec. 2)

§ 79.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding under § 79.10 if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) In an interstate situation subject to this section, the Secretary uses the procedures in § 79.10 if a state process provides a state process recommendation to the Department through a single point of contact.

(E.O. 12372, Sec. 2(e))

§ 79.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

(E.O. 12372, Sec. 2)

§ 79.13 [Reserved]

§§ 75.170, 75.171, 75.172, 75.173 and 76.105 [Removed]

2. The Secretary further amends Title 34 of the Code of Federal Regulations by removing Sections 75.170, 75.171, 75.172, 75.173 and 76.105.

[FR Doc. 83-16649 Filed 6-23-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of the Secretary

Notice of Programs Subject to Executive Order 12372

AGENCY: Department of Education.

ACTION: Notice of Programs Subject to Executive Order 12372.

SUMMARY: This notice identifies the Department's programs that are subject to the provisions of Executive order 12372 and the regulations in 34 CFR Part 79 (published elsewhere in today's Federal Register.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. F. LeRoy Walser, U.S. Department of Education, Office of Intergovernmental and Interagency Affairs, Room 3073, 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202) 447-9043.

SUPPLEMENTARY INFORMATION: On January 24, 1983 the Department published a Notice of Proposed Rulemaking (48 FR 3120) to implement Executive Order 12372. As part of the proposed rulemaking, the Department published a list of its programs that were proposed for inclusion under the Order. The Department also published the general Government-wide criteria used by federal agencies in identifying the programs covered under the Order, and a list of programs proposed for exclusion from coverage. The Department solicited comments on the proposed inclusions and exclusions. This notice reiterates the Government-wide criteria for the information of the public and provides the final lists of programs included and excluded from coverage under the regulations to be codified at 34 CFR Part 79.

Appendix A to this notice contains the general criteria used by federal agencies to determine the programs covered under the Order. Appendix B contains the final list of programs subject to the regulations at 34 CFR Part 79. Appendix C contains the final list of programs excluded from coverage under 34 CFR Part 79. Appendix D contains a list of the Department's programs for which state plan submissions are eligible for simplification, consolidation, or substitution under 34 CFR 79.12.

In the future, if the Department proposes to change these lists by adding or deleting programs, the Department will publish the proposed changes in the Federal Register for public comment.

Dated: June 16, 1983.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance number not applicable)

Appendix A—General Criteria Used by Federal Agencies in Identifying the Scope of Executive Order 12372

The categories of exclusions were prepared to help agencies identify which programs or activities should be subject to the provisions of E. O. 12372. Three categories of exclusions are presented: generic, class, and individual. Subcategories list the types of programs or activities covered within each category.

To help in the identification, two examples of inclusions—programs and activities subject to the provisions of the Executive Order—are also described. These are not the only programs and activities subject to the Executive Order. These examples are presented because related programs and activities are covered in the class exclusion category.

1. *Generic Exclusions:* Those programs or activities excluded by previously announced administration policy are:

a. Proposed federal legislation, regulations, and budget formulation.

b. Direct payments to individuals. (See also 2d.)

c. Classified programs or activities where formal consultation would endanger national security.

d. Financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects. (Examples include):

(1) General Revenue Sharing;

(2) Payments in lieu of taxes;

(3) Funds, allocated by formula, from sale receipts or proceeds from products/resources on federal lands;

(4) Block grants which are characterized by:

(a) Substantial flexibility being given state and local governments to allocate funds among different areas of effort and between state and locally derived priorities; and

(b) An absence of requirements that the recipient submit satisfactory plans or proposals for the use of these grant monies before the funds are provided.

e. Programs and activities directly administered by a federally recognized tribal government.

2. *Class Exclusions:* Those additional activities or programs determined not to be within the definition of financial assistance, direct federal development, or federal licensing or permitting under the Executive Order and thereby excluded are:

a. Certain financial transactions such as: standard procurement contracts; letter contracts; basic ordering agreements; purchase orders; joint ventures; job orders; acceptance of offers; operating funds for government-owned/contractor-operated facilities (GOCO); subawards under contracts, grant, or cooperative agreements; public utility contracts; consulting services; commodity purchases; payment of claims; leases and easements of a non-major nature; purchase of notes, stock, or bonds; and land grants.

b. Research, development, and demonstration other than that specified in the description of inclusions below.

c. Criminal or civil enforcement matters.

d. Direct financial assistance between the federal government and a *non-governmental entity*, such as a non-profit organization, business, corporation, association, private school or university. However, certain research, development, and demonstration awards to such non-governmental entities may be included (see 4 below). (A *governmental entity* is any state; independent state organization, board or commission; general purpose local government; special purpose local or regional government; council of government; non-profit organization established by state law or local ordinance exclusively to provide a governmental service and the substantial portion of the funding for which is federal. State and municipal colleges and universities are considered a non-governmental entity for the purposes of this memorandum.

Programs or activities with eligible recipients who may be either governmental or non-governmental entities: Some programs or activities have as eligible recipients both governmental and non-governmental entities, including individuals and private sector organizations. Under this paragraph programs or activities providing assistance to non-governmental entities can be excluded. The issue raised was whether such a program or activity should be excluded in its entirety because some of the potential recipients would qualify it for an exclusion. Our determination is that such a mix of recipients does not, by itself, allow the exclusion of a program or activity. Instead, agencies may choose either of two alternatives: 1.) to include these nongovernmental entities within the scope and subject some to the state process by not excluding the program, or, 2.) to exempt transactions with non-governmental entities from the intergovernmental review and consultation requirements by referencing such an exemption in their rulemaking.

e. Academic training and institutional aid grants; receipts from federally financed fellowships; scholarships; and student loans by institutions of higher education.

f. Federal rate-setting for utility services provided to state or local governments by the Federal Government.

g. A non-governmental entity's consultation with state or local government officials or securing state or local government review, approval, or certification, as a condition of receiving a federal or federally authorized license or permit.

3. *Individual Exclusions:* Those programs or activities that may be excluded on request of a federal agency. Requests for exclusions will be evaluated against the following qualifying factors and criteria:

a. A federal constitutional or statutory preemption precludes any state or local government jurisdiction over or responsibility for the individual federal program or activity, *and* recommendations or views of state or local governments can have little or no bearing on federal decisions in this area;

b. Meaningful consultation for the program or activity would breech financial, business, or trade secret confidentiality required by federal statute;

c. Affects other countries, particularly on matters of common interest to the United States and Canada or Mexico, and the consultation requirements of the Executive Order would interfere with the conduct of foreign policy;

d. Intergovernmental review consistent with the Executive Order would substantially impede the achievement of Presidentially or Congressionally established national goals.

4. *Selected Examples of Included Programs and Activities:*

These programs and activities are considered as being *within* the scope of the Executive Order and subject to its intergovernmental review provisions.

a. The following forms of federal assistance or financial transactions with government entities: grants; cooperative agreements; subsidies; loans; loan guarantees; insurance; technical assistance; expert information or counseling; property donations; real property acquisition or disposal; including obtaining major leases or easements; program or activities (other than General Revenue Sharing) receiving an exception to the provisions of the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224.

b. A research, development, or demonstration program or activity:

(1) Which has a unique geographic focus and is directly relevant to the governmental responsibilities of a state or local government within that geographic area; or

(2) Which necessitates the preparation of an Environmental Impact Statement under NEPA; or

(3) Which is to be newly initiated at a particular site or location and does not necessitate the preparation of an Environmental Impact Statement, but requires unusual measures to limit the possibility of adverse exposure or hazard to the general public (for example: special protective containment or shielding facilities or air, land, or water buffer zones).

Appendix B—Department of Education Programs Included Under 34 CFR Part 79[1]

Program name	CFDA reference
Adult education—State Administered Program	284.00
Bilingual Education	84.003
Title IV of the Civil Rights Act of 1964	84.004
Migrant Education Program—State Formula Grant Program	84.011
Follow Through	84.014
Handicapped Early Childhood Assistance	84.024
Handicapped Innovative Programs—Deaf-Blind Centers	84.025
Handicapped Media Services and Captioned Films[2]	84.026
Handicapped Preschool and School Programs	84.027
Handicapped Regional Resource Centers	84.028
Handicapped Teacher Recruitment and Information	84.030
Public Library Services	84.034
Interlibrary Cooperation	84.035
School Assistance in Federally Affected Areas—Construction	84.040
Vocational Education—Basic Grants to States	84.048
Vocational Education—Consumer and Homemaking Education	84.049
Vocational Education—Program Improvement and Supportive Services	84.050
Vocational Education—Special Programs for the Disadvantaged	84.052
Vocational Education—State Advisory Councils	84.053
Indian Education—Entitlement Grants to Local Educational Agencies and Tribal Schools	84.060
Indian Education—Special Programs and Projects to Improve Educational Opportunities for Indian Children	84.061
Indian Education—Adult Indian Education	84.062
Bilingual Vocational Training	84.077
Regional Education Programs for Deaf and Other Handicapped persons	84.078
Women's Educational Equity	84.083
Strengthening Research Library Resources	84.091
Bilingual Vocational Instructor Training	84.099
Bilingual Vocational Instructional Materials, Methods, and Techniques	84.100
Vocational Education—State Planning and Evaluation	84.121
Territorial Teacher Training Assistance Program	84.124
Rehabilitation Services—Basic Support	84.126
Rehabilitation Services—Client Assistance Projects	84.126F
Rehabilitation Services—Migratory Worker Vocational Rehabilitation Service Projects	84.126G
Centers for Independent Living	84.132
Migrant Education—Interstate and Intrastate Coordination Program	84.144
College Housing Loans[3]	84.142
Federal Real Property Assistance Program	84.145
Transition Program for Refugee Children	84.146
The following programs authorized by Subchapter D of Chapter 2 of the Education Consolidation and Improvement Act	84.151
National Diffusion Network Program Law Related Education Program Inexpensive Book Distribution Program Arts in Education Program Alcohol and Drug Abuse Program	84.073
Neglected or Delinquent Transition Services	84.152
General Assistance for the Virgin Islands	[4]

[1] Financial assistance transactions with Federally recognized Indian Tribal governments and nongovernmental entities, including state postsecondary educational institutions, are excluded from coverage under 34 CFR Part 79.

[2] Research, development, or demonstration projects which do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a state or local government within that geographic area are excluded from coverage under 34 CFR Part 79.

[3] This program is subject to Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334).

[4] Number not assigned.

Appendix C—Department of Education Programs Excluded From 34 CFR Part 79

Program name	Basis for exclusion—category	CFDA reference
Interest Subsidy Grants for Academic Facilities Loans.	2(d)	84.001
Bilingual Education-Fellowship Program.	2(e)	84.003
Bilingual Education-School of Education Projects.	2(e)	84.003
College Library Resources.	2(d)	84.005
Supplemental Education Opportunity Grants.	2(d), (e)	84.007
Chapter 1 of the Education Consolidation and Improvement Act—Handicapped Children in State Operated or Supported Schools.	1(d)	84.009
Chapter 1 of ECIA, Projects Operated by Local Education Agencies.	1(d)	84.010
Chapter 1 of ECIA, State Administration.	1(d)	84.012
Chapter 1 of ECIA, Projects Operated by SEA's for Children in State-Operated Institutions for Neglected or Delinquent Youth.	1(d)	84.013
National Resource Center.	2(d)	84.015
National Resource Fellowships.	2(e)	84.015
Undergraduate International Studies and Foreign Language Program.	2(d)	84.016
International Research and Studies.	2(e)	84.017
Teacher Exchange	2(e)	84.018
Fulbright-Hays Faculty Research Abroad Program in Foreign Language and Area Studies.	2(e)	84.019
Foreign Curriculum Consultants.	2(e)	84.020
Group Projects Abroad for Non-Western Language and Area Studies.	2(e)	84.021
Fulbright-Hays Doctoral Dissertation Research Abroad Program for Foreign Language and Area Studies.	2(e)	84.022
Handicapped Research and Demonstration.	2(b)	84.023
Training Personnel for the Handicapped.	2(e)	84.029
Special Needs Program.	2(d)	84.031
Strengthening Program.	2(d)	84.031
Challenge Grant Program.	2(d)	84.031
Guaranteed Student Loan Program Special Allowance/ Interest Payments.	1(d)	84.032
Federally Insured Student Loan.	1(d)	84.032
Auxiliary Loans (PLUS) Special Allowance.	1(d)	84.032
College Work-Study	2(d), (e)	84.033
Library Training	2(d)	84.036
National Defense/ Direct Student Loan Cancellations.	2(d), 2(e)	84.037
National Direct Student Loan.	2(d), 2(e)	84.038
Library Research and Demonstration.	2(b)	84.039
School Assistance in Federally Affected Areas—Maintenance and Operations.	1(d)	84.041
Special Services for Disadvantaged Students.	2(d)	84.042
Talent Search	2(d)	84.044

Program name	Basis for exclusion—category	CFDA reference
Continuing Postsecondary Education Program and Planning.	1(d)	84.048
Upward Bound	2(d)	84.047
Vocational Education—Program Improvement Projects.	2(b)	84.051
Cooperative Education Programs.	2(d)	84.055
Cooperative Education and Supplemental College Work-Study.	1(d), 2(d)	84.055
Indian Education Act—Special Educational Program for Teachers of Indian Children.	2(e)	84.061
Pell Grants	1(b)	84.063
Veterans Cost-of-Instruction.	2(d)	84.064
Educational Opportunity Centers.D2(d).	84.066	
State Student Incentive Grant Program.	1(d), 3(a)	84.069
Indian Education Act, Grants to Indian Controlled Schools.	1(e)	84.072
Innovative Programs for Severely Handicapped Children.	2(b)	84.086
Indian Education Act, Fellowships.	2(e)	84.087
Fellowships for Graduate and Professional Study.	2(d)	84.094
Institutional Grants for Graduate and Professional Study.	2(d)	84.094
Law School Clinical Experience Program.	2(d)	84.097
Vocational Education—Program for Indian Tribes and Indian Organizations.	1(e)	84.101
Staff Training for Professional Development.	2(d)	84.103
Biomedical Sciences	2(d)	84.112
Capacity-Building Grants to Universities by the National Center for Education Statistics.	2(d)	84.114(b)
Capacity-Building Grants to Vocational Education Institutions by the National Center for Education Statistics.	2(d)	84.114(c)
Fund for the Improvement of Postsecondary Education.	2(d)	84.116
Research, Development, and Demonstration Activities and Programs of the National Institute of Education.	2(b)	84.117
Minority Institution Science Improvement Program.	2(d)	84.120
Rehabilitation Services—.		
Projects & Demonstrations for Services to Severely Handicapped Individuals.	2(d)	84.128A
Projects with Industry.	2(d)	84.128B
Comprehensive Rehabilitation Centers.	2(d)	84.128C
Helen Keller National Center.	3(b)	84.128D
Special Projects—Spinal Cord Injury Centers.	2(d)	84.128E
Handicapped American Indian Vocational Rehabilitation Service Program.	1(e)	84.128H
Projects for Initiating Special Recreation Programs.	2(d)	84.128J
Rehabilitation Training Program.	2(e)	84.129
National Institute of Research.	2(b)	84.133
Aid to Land-Grant Colleges.	1(d), 2(b)	84.135
Legal Training for the Disadvantaged.	2(d)	84.136
Title IV, Higher Education Act, High School Equivalency Program.	2(e)	84.41
Allen J. Ellender Fellowships.	2(d)	84.148
Title IV, Higher Education Act, College Assistance Migrant Program.	2(e)	84.149
Chapter 2 of the Education Consolidation and Improvement Act—Except the Chatper 2 programs listed in Attachment A to the preamble.	1(d), 2(b), 2(e)	84.151
Research Activities of the National Center for Educational Statistics.	2(b)	(1)
Research, Development, and Demonstration Activities and Programs of the Center for Educational Improvement (Incorporating the Office of Libraries and Learning Technology and the Professional Development and Dissemination Programs).	2(b)	(1)
Educational Technology Program in the Office of the Assistant Secretary, Including Research, Development and Demonstration.	2(b)	(1)

[1] Number not assigned.

Appendix D—Department of Education Programs Eligible for Simplification, Consolidation, and Substitution Under 34 CFR Part 79.12

Program name	CFDA reference
Adult Education—State Administered Program	84.002
Public Library Services	84.034
Interlibrary Cooperation	84.035
Vocational Education—Basic Grants to States	84.048
Vocational Education—Consumer and Homemaking Education	84.049
Vocational Education—Program Improvement and Supportive Services	84.050
Vocational Education—Sepcial Program for the Disadvantaged	84.052
Vocational Education—State Advisory Councils	84.053
Vocational Education—State Planning and Evaluation	84.121
Rehabilitation Services—Basic Support	84.126

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Part VII

Department of Energy

Intergovernmental Review of Department of Energy Programs and Activities and Financial Assistance Rules; Final Rule and Programs and Activities Subject to Executive Order 12372 as Implemented by 10 CFR Part 1005

DEPARTMENT OF ENERGY

10 CFR Parts 600 and 1005

Intergovernmental Review of Department of Energy Programs and Activities and Financial Assistance Rules

AGENCY: Energy Department.

ACTION: Final Rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Energy. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act. In addition the Department is issuing a conforming amendment to 10 CFR 600.11.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT:
Thomas Reynolds, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.
Mary Ann Masterson, Office of the Assistant General for Procurement and Incentives (GC-44), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3130), the Department of Energy, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 18 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officals and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the strategy for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) will continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can then submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus,—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed action under either selected or nonselected programs or activities.

Section-by-Section-Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
1005.1	1005.1.
1005.2	1005.2.
1005.3(a)	1005.3.
1005.3(b)	1005.7(a).
1005.4	1005.4.
1005.5(a)	1005.6(b).
1005.5(b)	1005.6(d).
1005.5(c)	1005.6(c).
1005.6(a)	1005.8(b).
1005.6(b)	1005.7(a).
1005.6(c)	1005.8(a).
1005.6(d)	Deleted.
1005.6(e)	1005.9.
1005.7(a)	1005.10(a).
1005.7(b)	1005.10(b), (c).
1005.8	1005.11.
1005.9	1005.12.
1005.10	1005.13.

Portions of the final rule not listed in this table (§§ 1005.5, 1005.6(a), 1005.7(b), and 1005.8(c)) are new.

Section 1005.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. The text of section 401 is printed in this issue (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal

agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose.

Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 1005.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit the scope of this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in section 1005.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 1005.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to certain federal financial assistance and direct federal development programs and activities, and the order mandates consultation only when state and local governments provide the non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many national security actions, even those affecting state and local jurisdictions, involve classified information. It is meaningless to expect state and local review of national security matters, for example, when access to the plans or documents for the proposed federal action is not possible for national security reasons. It is appropriate for federal agencies to decide which of their activities are intended to come under the scope of the Executive Order.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government nor do they directly affect them.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule in order to allow future changes to be made more conveniently. The Department will seek public comment on proposed future

program or activity exclusions as these occur.

Section 1005.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 1005.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new § 1005.5, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 1005.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** notice prescribed by § 1005.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's Letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 1005.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to § 1005.6(c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures would apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 1005.7, discussed below.

Section 1005.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Department should be contacted for more information.

Section 1005.8. How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 1005.6a(c) of the NPRM (redesignated § 1005.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal

development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the commenting period that may be necessary, to directly affected State, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 1005.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key element in any timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 1005.6 of the NPRM has been dropped. A new § 1005.9 of the final rule describes how the Secretary receives and responds to comments.

Section 1005.9 How does the Secretary receive and respond to comments?

This new section replaces § 1005.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 1005.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 1005.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or

explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve, or undesirable to attempt, consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 1005.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities where there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure those commenters who were concerned that their views would be subject to "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from section 401.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 1005.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain its nonaccommodation. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters

suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 1005.11 What are the Secretary's obligations in interstate situations?

This section is based on § 1005.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitar areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact the Department would also accommodate or explain that recommendation as well.

Section 1005.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Department did recieve a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow that consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet satutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process in not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Department and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination

should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for appears elsewhere in today's Federal Register and will be updated periodically.

Section 1005.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entitites that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

As was discussed above in the § 1005.3 analysis of comments, the Executive Order clearly was not intended to cover all Federal activities. The Department has the duty to assure that the programs and activities identified as included or excluded from coverage are consistent with the intent of the Executive Order. In assuming this duty, the Department is guided by the terms of the Executive Order itself and the "General Criteria Used by Federal Agencies in Identifying the Scope of Executive Order 12372" published in the Federal Register January 24, 1983 at 48 FR 3125.

The Department is providing for intergovernmental coordination of more programs and activities under the provisions of the Executive Order than it did under OMB Circular A-95. We believe it is in part for this reason that a number of commenters wrote solely to endorse the Department's proposed scope of coverage and criteria for exclusions. Some comments, however, disagreed with our proposed exclusions and others reflected confusion over the Department's intent. Others expressed interpretations of the Executive Order consistent with the Department's own understanding.

Some comments objected to some or all exclusions shown without stating any basis for the objections. It is difficult to respond to such objections beyond stating that the Department's exclusions are consistent with the intent of the Executive Order and the Government wide standards for such determinations cited above. Two comments objected to the criteria used in determining program and activity exclusions. The Department believes these government-wide criteria are appropriate for this determination.

Two comments noted the exclusion of the Energy Extension Service from the list of State Plans eligible for simplification, consolidation, or

substitution. The omission of the Energy Extension Service from the list was an error and the plan requirements of this program are covered by the Executive Order and this regulation.

Two comments, received from States, indicate that those States have, or will have, State Laws requireing state process handling for certain classes of applicants which may or may not be consistent with the terms of the Executive Order and these regulations. The Department has no objection to being advised of such requirements of state law but can assume no responsibility for their enforcement.

Several comments expressed the belief that the Federal Energy Regulatory Commission's activities were intended to be covered by the regulations as they were not proposed for exclusion. The Commission has the authority to license certain non-Federal development activities and to set certain economic rates. These activities are neither direct Federal development nor Federal financial assistance and therefore do not fall within the scope of the Executive Order.

A number of comments sent to OMB expressed concern that the Federal Power Administrations were not covered by any proposed regulations. The Federal Power Administrations are constituent parts of the Department of Energy and are therefor subject to this regulation. With respect to the Bonneville Power Administration, the intergovernmental consultation requirements of the order and this regulation will be satisfied by compliance with the consultation requirements of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501. Section 1005.3(c) reflects this clarification.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 10 CFR Parts 600 and 1005

Energy, Grant programs energy, Reporting and recordkeeping requirements, Small business, Intergovernmental relations.

Issued at Washington, D.C., June 8, 1983.

Donald Paul Hodel,

Secretary.

1. For the reasons set out in the Preamble, the Department of Energy amends Title 10, Code of Federal Regulations, by adding a new Part 1005, to read as follows:

PART 1005—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF ENERGY PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

§ 1005.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 1005.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Energy.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Energy or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1005.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the **Federal Register** a list of the Department's program and activities that are subject to the order and these regulations.

(b) Unless otherwise stated in the **Federal Register** listing identified in paragraph (a) of this section, these regulations do not apply to the Department's financial assistance transactions with other than governmental entities.

(c) The Bonneville Power Administration shall satisfy the requirements of these regulations by compliance with the consultation requirements of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501.

§ 1005.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds, for, or that would be

directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Make efforts to accommodate state and local elected official's concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 1005.5 What is the Secretary's obligation with respect to Federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 1005.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the Federal Register in accordance with § 1005.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 1005.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) [Reserved]

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process. This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

§ 1005.8 How does the Secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected State, areawide, regional and local officials and entities—

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

§ 1005.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 1005.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1005.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from, state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(C) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 1005.10 of this part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 1005.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 1005.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the

explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 1005.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 1005.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 1005.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 1005.12 How may a state simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 1005.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

PART 600—FINANCIAL ASSISTANCE RULES

2. The Department also amends § 600.2(e)(1)(iii), and revises § 600.11 of the DOE Financial Assistance Rules, 10 CFR Part 600 (revised at 47 FR 44076, October 5, 1982), as follows:

a. The Table of Contents of subpart A is amended by revising the section heading for § 600.11 to read as follows:

Subpart A—General

Sec.

* * * * *

600.11 Intergovernmental review.

* * * * *

b. In § 600.2, paragraph (e)(1)(iii) is removed and (e)(1)(iv) through (vii) are redesignated as (e)(1)(iii) through (vi) and are revised to read as follows:

§ 600.2 Applicability.

* * * * *

(e) *OMB Circulars.* * * *

(1) * * *

(iii) OMB Circular A–124, Patents—Small Business Firms and Nonprofit Organizations (47 FR 7556, February 18, 1982).

(iv) OMB Circular A–21, Cost Principles Applicable to Grants, Contracts and Other Agreements with Institution of Higher Education (44 FR 12368, March 6, 1979 as amended by 47 FR 333658, August 3, 1982).

(v) OMB Circular A–87, Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments (46 FR 9548, January 28, 1981).

(vi) OMB Circular A–122, Cost Principles Applicable to Grants, Contracts and Other agreements with Nonprofit Organizations (45 FR 46022, July 8, 1980).

* * * * *

c. Section 600.11 is revised to read as follows:

§ 600.11 Intergovernmental review.

Intergovernmental review of DOE financial assistance shall be conducted in accordance with 10 CFR Part 1005.

[FR Doc. 83-16367 Filed 6-23-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Programs and Activities Subject to Executive Order 12372 as Implemented by 10 CFR Part 1005

AGENCY: Energy Department.

ACTION: Notice.

SUMMARY: The Department of Energy is announcing those programs and activities subject to untergovernmental coordination in accordance with provisions of Executive Order 12372 as implemented by 10 CFR Part 1005.

EFFECTIVE DATE: This announcement of covered programs and activities shall become effective on Sepember 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Thomas M. Reynolds, Business and Financial Policy Branch (MA–421.2) Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 252–8191.

Mary Ann Masterson, Office of the Assistant General Counsel for Procurement and Incentives (GC–44), Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–1526.

SUPPLEMENTARY INFORMATION: The Department of Energy has found the following programs and activities to be subject to Executive Order 12372 as implementd by 10 CFR Part 1005:

Federal Financial Assistance

The following programs as covered when the recipient of such assistance is a governmental entity. (A governmental entity is any state; independent state organization, board or commission; general purpose local government; special purpose local or regional government; non-profit organization established by state law or local ordiance exclusively to provide a governmental service and the substantial portion of the funding for which is federal; State and municipal colleges and universities are considered non-governmental entities.)

Catalog of Federal Domestic Assistance No.	Program
81.041	State Energy Conservation.
81.042	Weatherization Assistance for Low-Income Persons.
81.043	Supplemental State Energy Conservation.
81.050	Energy Extension Service.
81.051	Appropriate Technology Small Grants Programs.
81.052	Energy Conservation for Institutional Buildings.
81.058	Geothermal Loan Guarantees.
81.060	Electric and Hybrid Vehicle Loan Guarantees.
81.074	Alcohol Fuels Loan Guarantees.
	Loan for Geothermal Reservoir Confirmation Projects.
	Loans for Wind Energy Systems and Small Hydroelectric Power Projects.
	Loans for Small Hydroelectric Power Project Feasibility Studies and Related Licensing.
	Wing Energy Technology Application Program.
	Loan Guarantees for Alternative Fuel Demonstration Facilities.

Note.—Those programs without CFDA numbers are currently not funded by appropriations.

Also covered are research, development and demonstration programs and activities when such programs and activities (1) have a unique geographic focus and are directly relevant to the governmental responsibilities of a state or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. These programs include:

81.036	Energy Related Inventions.
81.049	Basic Energy Sciences, High Energy/Nuclear Physics, Fusion Energy, Health and Environmental Research, Program Analysis and Filed Operations Management.
81.057	University Coal Research.

State Plans

The State Plans of the following programs are eligible for simplification, consolidation, or substitution in accordance with the provisions of 10 CFR Part 1005.

Catalog of Federal Domestic Assistance No.	Program
81.041	State Energy Conservation.
81.042	Weatherization Assistance for Low-Income Persons.
81.043	Supplemental State Energy Conservation.
81.050	Energy Extension Service.
81.052	Energy Conservation for Institutional Buildings.

Direct Federal Development Programs and Activities

The following direct federal development program and activities are subject to the provisions of 10 CFR Part 1005.

1. Strategic Petroleum Reserve Proram.

2. Naval Petroleum and Oil Shale Reserves Program.

3. The Department engages in a number of direct federal development activities which cannot be usefully categorized and listed as direct federal development programs for the purposes of this notice. The Department will rigorously examine each proposes direct federal development activity during the planning cycle to determine whether it is subject to Executive Order 12372. The Department will be guided by the terms of the Executive order itself and the "General Criteria Used by Federal Agenciea in Identifying the Scope of the Executive Order" published in the **Federal Register** January 24, 1983, at 48 FR 3125. It should be noted that a number of the Department's activities will be exempted accordingly by virtue of national security considerations.

Issued at Washington, D.C., June 8, 1983

Donald Paul Hodel,

Secretary.

[FR Doc. 83–16366 Filed 6–23–83; 8:45 am]

BILLING CODE 6450–01–M

federal register

Friday
June 24, 1983

Part VIII

Department of Health and Human Services

Office of the Secretary

Intergovernmental Review of the Department of Health and Human Services Programs and Activities; Final Rule and

Programs Subject to the Provisions of Executive Order 12372, Intergovernmental Review of Federal Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 51c, 52b, 55a, 56, and 122

45 CFR Parts 100, 224, and 1351

Intergovernmental Review of the Department of Health and Human Services Programs and Activities

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to certain federal financial assistance and direct federal development programs and activities of the Department of Health and Human Services. These regulations replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT:

- Regarding the regulations generally and implementation of the state plan simplification, consolidation and substitution provisions of these regulations—Mr. Gordon Boe, Office of the Deputy Under Secretary for Intergovernmental Affairs, (202) 245-6036.
- Regarding implementation of the provisions of these regulations that apply to certain HHS federal financial assistance programs and activities—Mr. Jonathan D. Breul, Office of Procurement, Assistance and Logistics, ASMB, (202) 245-7565.
- Regarding implementation of the provisions of these regulations that would apply to certain HHS direct federal development programs and activities—Mr. Thomas C. Cleary, Office of Facilities and Management Services, ASMB, (202) 245-1597.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1983, (48 FR 4130), the Department, along with 25 other federal agencies, published a Notice of Proposed Rulemaking (NPRM) to carry out Executive Order 12372. Some agencies published notices proposing that programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. On March 2, 1983 the agencies and OMB held a public meeting to solicit comments on the NPRM. On April 21, 1983 the Department, in conjunction with the other federal agencies and OMB, published a notice in the **Federal Register** reopening the comment period, scheduling another public meeting for May 5, 1983, and requesting comments on several tentative responses to comments. (48 FR 1701)

The Department received numerous comments on government-wide issues during the comment period, including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket. In addition, the Department received comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these written comments as well as testimony at the public meetings and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983. Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM has contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, postponing the effective date of these final regulations until September 30, 1983. (48 FR 15587 April 11, 1983.) The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own processes for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Four major elements comprise the scheme for implementing the Executive Order. These are the state process, the state process recommendation, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated official or entity to act as a single point of contact between the state and all federal agencies;
—Delegations of review and comment responsibilities to particular areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and,
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Elsewhere in this issue of the Federal Register, HHS has published a list of those programs and activities eligible for selection under the scope of the Order. Any changes in this list will also be published in the Federal Register. After consulting with local elected officials, the state selects which of these HHS programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the state's list are provided directly to HHS.

HHS provides the state process with notice of proposed actions for selected programs and activities. For any proposed federal financial assistance or direct federal development under a selected program or activity, the state has among its options those of: Preparing and transmitting a "state process recommendation" through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; or not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, HHS will provide notice, opportunities for review, and consideration of comments consistent with the provisions of section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

"State Process Recommendation"

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. A state process recommendation may be a consensus—i.e., the unanimous recommendation of areawide, regional, and local officials or entities—or it may contain a recommendation which resolves differing views. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The term "accommodate or explain" is discussed later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are transmitting to HHS any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. In addition to these responsibilities a state could choose to broaden the single point of contact's role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. However, commenting officials and entities may submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, and will be considered by HHS in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory or regulatory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, HHS will: (1) Accommodate the recommendation by accepting it or reaching a mutually agreeable solution with the parties; or (2) provide the single point of contact with a written explanation of the Department's decision.

If there is nonaccommodation, the Department is generally required to wait 10 days after it explains its decision to the single point of contact before taking final action.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
100.1	100.1
100.2	100.2
100.3(a)	100.3
100.3(b)	100.7(a)
100.4 [Reserved]	100.4 [Reserved]
100.5(a)	100.6(b)
100.5(b)	100.6(d)
100.5(c)	100.6(c)
100.6(a)	100.8(b)
100.6(b)	100.7(a)
100.6(c)	100.8(a)
100.6(d)	100.8 Deleted
100.6(e)	100.9
100.7(a)	100.10(a)
100.7(b)	100.10(b), (c)
100.8	100.11
100.9	100.12
100.10	100.13

Portions of the final rule not listed in this table (§§ 100.5, 100.6(a), 100.7(b), and 100.8(c) are new.)

Section 100.1 What is the purpose of these regulations?

Change—There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. These statutes are reproduced as an appendix to this preamble.

Comment—Commenters, including state, local, and regional agencies, interest groups and members of Congress, urged that the regulations implementing Executive Order 12372 also provide that federal agencies carry out their responsibilities under these statutes.

Response—As noted above, the Executive Order was amended to cite section 204 as authority as well as section 401. In addition, § 100.1(a) (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Section 100.1(b) adds mention of "areawide" entities in keeping with

section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

Comment—Commenters suggested deleting the language in § 100.1(c) which states that the regulations were not intended to create any right of judicial review.

Response—The rule retains this language. The purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on the one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be contrary to their purpose. However, HHS has statutory responsibilities under the laws on which these rules are based. By retaining § 100.1(c), the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 100.2 What definitions apply to these regulations?

Comment—Commenters did not object to the definitions in the proposed rule. However, some commenters asked that various additional terms be defined including: Environmental impact statement; state plans; direct federal development; federal financial assistance; emergency; unusual circumstances; accommodate; and state process.

Response—The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term except in its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance" because we believe that these definitions are unnecessary. Instead, HHS believes that the lists of state plans and program inclusions accompanying this rulemaking provide a comprehensive list of the plans, programs and activities that are subject to the provisions of this rule.

The Department also decided not to define the terms "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and under inclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond their control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is explained in § 100.10. If the Secretary accepts the state process recommendation or reaches a mutually agreeable solution, the Department has accommodated the concerns expressed in the recommendation. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. As the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not necessary.

Finally, the Department concluded that a definition of the term "state process recommendation" would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 100.3 What programs and activities of the Department are subject to these regulations?

Comment—This section is substantively very similar to § 100.3(a) of the NPRM. A number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by HHS in developing its list of programs and activities that were being proposed for exclusion.

Response—The Order does not cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are covered by the Order. For example, many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities of state and local governments. On the other hand, a purpose of block grant programs is to give funding discretion to state and local governments. There is little point in consultation between state and local governments and HHS regarding funding under block grant programs when the Department has virtually no discretion with respect to grant applications or other decisions.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many national security actions, even those affecting state and local jurisdictions, involve classified information. It would be inappropriate to seek state and local review of such national security matters when access to the plans or documents for the proposed federal action is not possible for national security reasons.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which a state may select. However, in response to comments, the Department has revised the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice elsewhere in this issue of the Federal Register listing these "covered" programs and activities. HHS has no programs to which section 204 of the Demonstration Cities and Metropolitan Development Act currently applies. However, should such programs subsequently be added to this list, the applicability of section 204 will be indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity inclusions or exclusions as these occur.

Section 100.5 What is the Secretary's obligation with respect to federal interagency coordination?

Comment—Some commenters, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other.

Response—The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from section 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 100.6 What procedures apply to the selection of programs and activities under these regulations?

Comment—Some commenters asked that the states' obligation to consult with local elected officials in the establishment of a state process, and in making program selection choices, be spelled out in the rule.

Response—We have added a new § 100.6(a) in order to make clear that any program or activity published in the Federal Register list prescribed by section 100.3 is eligible for selection for a state process. The section also indicates more explicitly than the NPRM that states are required to consult with local elected officials before selecting programs and activities for coverage. OMB previously wrote the Governors asking each to provide an assurance of local consultation when the state submits its initial list of selected programs and activities. A similar assurance is required by § 100.6(c) when changes are made to the initial selections.

Comment—Several commenters suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes.

Response—The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establisment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Section 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Changes—Section 100.7(a) incorporates material from proposed §§ 100.3(b) and 100.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 may be undertaken by the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Comment—A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for review under a state process.

Response—New § 100.7(b) is intended to respond to these concerns. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the Federal Register or in a publication widely available in the area potentially affected by the proposed federal action), or through actual notification of directly affected entities or officials (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and will identify the Departmental official who should be contacted for more information.

Section 100.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

Comment—The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt that 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes need to be resolved.

Response—In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days. The Secretary points out that noncompeting continuation applications contain only sufficient information to indicate progress in the activities proposed in the original application. Review by the funding agency is primarily to ensure adequate progress in the framework of previously approved budget and program activity, rather than to approve a proposal. Hence, the most useful source of project information to the state ordinarily will not be the continuation application, but other sources in its community. Because of the limited information in noncompeting continuation applications, states may wish to adopt different criteria or a more limited set of criteria to be employed for this type of application.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information may be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted.

Comment—Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful.

Response—The Department is aware of these concerns, and in the interest of retaining as much flexibility as possible for the state process, we have decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Additional discussion—Section 100.8(b) is derived from § 100.6(a) of the NPRM. This paragraph is intended to make clear that the provisions of this section also apply when the responsibility for review, coordination and communication with the Department is delegated to local officials.

Section 100.6(e) of the NPRM has been deleted. A new § 100.9 of the final rule describes how the Secretary receives and responds to comments.

Section 100.9 How does the Secretary receive and respond to comments?

Comment—This new section replaces proposed § 100.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 100.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

Many commenters discussed this "single point of contact" concept. Some commenters wanted to permit multiple points of contact within a state instead of only one. Some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Finally, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

Response—In response to these comments, and consistent with the amended Executive Order and the Department's decison explicitly to implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, through these regulations, the Department has made substantial changes to this paragraph. The concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in a simple and understandable manner. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That decision is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Section 100.9(a) obligates the Secretary to follow the "accommodate or explain" procedures of § 100.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommmendation. The single point of contact may transmit the recommendation to the Department directly or may require the applicant to do so. If these conditions are not met, the Secretary will, nevertheless, consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an

important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should, to the extent of their discretion under law, make greater efforts to accommodate the concerns of state and local elected officials than has sometimes been the case in the past. The Department's reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. Where states and other directly affected parties forge a unified state process recommendation, it is appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. Several commenters said, in connection with the 30-day review period proposed by the NPRM, that it would be difficult to achieve consensus with respect to some projects or programs. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 100.10 to a state process recommendation which does not represent a unanimous recommendation. In such a case, because the single point of contact is required under § 100.9(b)(2) to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Section 100.9(b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends, if they wish to do so. These entities may also choose to send their comments directly to the Department at the same time that they send them to the state process.

Section 100.9 (c) and (d) provide for the Department's response to comments in situations where there is no state process or where programs are not selected for review by a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department will consider these comments. Section 100.9(d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Section 100.9(e) reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

Comment.—A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Response.—Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe that it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation.

Section 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Comment.—Section 100.10(a) now provides that if a state process recommendation is submited to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, § 100.10(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This does not preclude the Department from class informing the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, even if such conversation or communication occurs, the Department will always provide a written explanation of the nonaccommodation to the single point of contact.

Comment.—The NPRM provided that the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days.

Response.—The Department believes that ten days will provide adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state. In addition, the Department believes that to avoid undue delay, a longer period should not be provided.

The Department has included a new § 100.10(c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received the letter. This presumptive date of receipt is five days from the date of the letter, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other contexts.

Comment.—Some commenters indicated what they sought most was federal agency responsiveness to their comments. The commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95.

Response.—In providing explanations of nonaccommodation, the Department will be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and within its statutory authority.

Section 100.11 What are the Secretary's obligations in interstate situations?

Comment.—This section is based on proposed § 100.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been deleted because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states do not agree with one another. Some commenters also said that greater attention should be given to the role of the designated areawide entities that represent interstate metropolitan areas.

Response.—The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the interests of all the parties involved for affected states and local elected officials to mutually agree on the Department's programs and projects that affect interstate areas. On a case-by-case basis, as appropriate, the Department will work with these officials in attempting to secure this agreement.

The Department also believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, § 101.11(a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Section 101.11(a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in parts of Maryland, Virginia and the District of Columbia. If that Council of Governments is delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would "accommodate or explain" that recommendation as well.

Section 100.12 How may a state simplify, consolidate or substitute federally required state plans?

This section is unchanged from the NPRM. The Department received a number of comments on this section, however. In general, state elected officials and department directors strongly supported this provision, while state developmental disabilities councils, state and areawide aging agencies, and advocates for children, the handicapped and the aging strongly objected to allowing states to consolidate their plans. The major objections to this section are discussed below, along with the Department's responses.

Comment—Several commenters were concerned that state plan consolidation will lead to a lack of federal monitoring and a substantial weakening of enforcement of state compliance with statutory and regulatory requirements.

Response—The Department wants to make it unequivocally clear that it will continue to require states to meet all federal statutory and regulatory planning requirements. The Department will not approve any plan that does not meet these requirements; we will continue to monitor the states to ensure that they implement their programs in compliance with statutory and regulatory requirements. This provision does not permit states to ignore the requirements; it merely allows the States to use their own planning and budgeting processes to design plans that meet those requirements without detailed federal guidance that is not contained in statute or regulations.

Comment—Several commenters believed that this provision allows states to consolidate programs and shift separate federal categorical program funds among programs, and that this is simply an attempt to permit states to develop block grants by the back door.

Response—The Department emphasizes that states will not be allowed to consolidate programs or, except to the extent permitted by law, to shift federal funds from one program to another. This is not an attempt to provide informal block grants. States must continue to meet program statutory and regulatory requirements governing the expenditure of federal funds for targeted groups of eligible people and the administration of categorical programs. This provision simply provides the states a greater opportunity to conduct planning across program lines to ensure the most effective and efficient use of categorical federal funds (e.g., to identify gaps and overlaps in services).

Comment—A number of commenters questioned the advisability of permitting states to consolidate specific plans (i.e., aging, child welfare services and developmental disabilities) with other plans. They recommended that these plans be excluded from plan consolidation. Their concerns included a fear that the programs would lose visibility, the belief that each program is so unique in its purpose and requirements that federal mandates cannot be met in a consolidated plan, skepticism that the states would in fact save any paperwork by consolidating plans, and the contention that states would not find it useful to consolidate plans.

Response—The Department's experience in its 10-state Planning Reform Project has demonstrated that: (a) Federal statutory and regulatory planning requirements for these programs can be met in consolidated plans; (b) inclusion in a consolidated plan provides an opportunity for the programs to increase their visibility, because they can demonstrate to the Governor, the legislature and the general public that the services needed by their clients extend beyond the narrow federally-funded categorical program; (c) states were able to save paperwork and reduce federally-imposed administrative burdens (in several cases, states saved over 1,000 pages) simply by eliminating duplicative information and developing their own formats; and (d) the consolidated plans were more understandable and useful to Governors, department directors, legislatures and the general public than the previous categorical plans. The Department recognizes that since the requirements of the programs vary, and since the organizational structures and priorities vary among the states, plan consolidation may not be appropriate in a particular state. For these reasons, we have left plan consolidation at the option of the states. If a state does not

wish to consolidate program plans, it may simplify separate categorical plans.

Comment—One commenter recommended that the Department establish an appeals process under these regulations, to deal with situations in which the Department disapproves modified state plans.

Response—The Department believes that a new appeals process is not necessary, because the states can appeal any disapproval through normal appeal mechanisms. In addition, before the Department makes a final determination to disapprove any plan, it works with the states to resolve problems that impede approval.

Comment—A few commenters recommended that a "single point of contact" be established for the entire federal government to deal with states on the simplification, consolidation or substitution of state plans.

Response—In consultation with the other federal agencies, the Department has concluded that this recommendation should not be adopted, because each federal agency must retain its existing authority and responsibility for approving the state plans required by its programs. However, the Department will designate an official to coordinate the provision of technical assistance to states in this area (review and approval of state plans will continue to reside with the affected HHS program officials, however). In addition, the federal agencies that require state plans will establish an interagency steering group, which will meet regularly to discuss state plan issues. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases where states consolidate plans across federal agency lines. This coordination will promote consistent determinations among and within agencies on state plans.

Comment—One commenter suggested that the federal agencies should develop a model state plan format that could be used by the states.

Response—While we are willing to provide suggestions in response to specific state questions (including the provision of formats that other states have used successfully), we believe that states should have the flexibility to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats.

Comment—Several commenters stated that since the Adoption Assistance state plan is incorporated into the Title IV–E Foster Care state plan, it should be deleted from the list of state plans eligible for modification on the same basis as Title IV–E Foster Care.

Response—The Department agrees with this comment, and has removed Adoption Assistance from the list. The final list of state plans that may be simplified, consolidated or substituted is published elsewhere in this Federal Register. The Department will update this list as necessary.

Section 100.13 May the Secretary waive any provision of these regulations?

Comment—This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a "loophole" allowing federal noncompliance with the Executive Order.

Response—The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver is used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there were several other comments to which the Department would like to respond.

Comment—Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. These commenters were concerned that federal agencies are not really interested in consulting with state and local governments and that, in the absence of an OMB "policing" role, agencies would tend to ignore their obligations.

Response—The Department is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President.

Comment—A number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies (e.g., environmental impact statements, historic preservation, civil rights, etc.).

Response—The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent feasible, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

Comment.—Some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A–95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters.

Response.—Under these regulations, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. HHS may also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where a state wishes to do so, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

In addition to the general comments on program coverage discussed in

§ 100.3 of this preamble, the Department received a number of comments on either the criteria that we used for determining program coverage, or on specific programs that the commenters believed should be included or excluded under these regulations. These comments and our responses are summarized below:

Comment.—Many commenters objected to the criteria that we used to develop Attachment A to the NPRM, which listed those programs that we believed are not subject to the Order. They stated that the only criterion that should be used is whether a program or activity "directly affects" state the local governments.

Response.—The Department has revised the criteria for evaluating each program and activity in light of these comments. The process that we used was as follows: First, we determined whether a program or activity was classified by the *Catalog of Federal Domestic Assistance* as "federal financial assistance." (The Department currently has no "direct federal development" projects.) Since the Executive Order covers only these two types of federal activity, the Department did not consider other types of programs. Second, the Department examined its financial assistance programs to determine if they met the tests established for exclusion by the July 14, 1982 White House Fact Sheet that accompanied the Executive Order (i.e., direct payments to individuals, financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects, classified programs or activities where formal consultation would endanger national security). Programs that met these tests were then excluded. In addition, in accordance with the Fact Sheet, federally recognized Indian tribes are exempted from the requirements of the Order. Third, for the remaining federal financial assistance programs administered by HHS, the Department determined whether they directly affect state and local governments. After reexamining its programs using this process, the Department developed its final list of programs to be included under these regulations. This list is published as a separate notice in today's **Federal Register.** We also believe that this list includes any program or activity subject to section 401 of the Intergovernmental Cooperation Act.

Comment.—Several States identified a number of research, demonstration and academic training programs that they believe should be subject to these regulations.

Response.—In reexamining its proposed exclusions, the Department carefully considered the suggestions for including additional research, demonstration and academic training programs. However, the Department has concluded that the programs identified for exclusion in Attachment A to the NPRM do not directly affect State and local governments because: (1) They do not affect specific geographic areas, but rather add to the national knowledge base in a field of endeavor; (2) they are usually competed on a national basis and are not directly related to a specific geographic area; (3) the subject areas of such projects are not directly related to the responsibilities of State and local governments; (4) they provide training to improve the skills and knowledge of individual practitioners in health and human services; and (5) they do not involve substantial construction, rehabilitation or physical change to the natural environment.

Comment.—Several States recommended that programs providing direct payments to individuals or financial transfers with no federal funding discretion should be subject to these regulations, in order to allow State and local officials to monitor, anticipate and incorporate federal changes in such areas as shifts in eligibility requirements, formula-based allocations, etc.

Response.—The Department has not included these programs under the regulations. Major changes in federal program eligibility requirements, formulas, and other policies in these programs are made by HHS through regulations (often in response to statutory mandates by Congress), which provide opportunity for state and local elected officials to comment on the proposed changes.

Comment.—A number of commenters recommended that Health Maintenance Organizations (HMOs) be subject to these regulations.

Response.—The Department has excluded HMOs for two reasons: (1) Public review of HMO applications could result in unauthorized disclosure of proprietary information that could seriously jeopardize the HMO's position in the marketplace; and (2) HMOs are already required to be licensed by the State.

Comment.—Several States recommended that Professional Standards Review Organizations (PSROs) be subject to these regulations.

Response.—The Department notes that under the Tax Equity and Fiscal Responsibility Act of 1982, Congress changed the nature of this program. PSROs will be replaced by a new system of utilization and quality "utilization and quality control peer review organizations," which will provide certain services for the Department under the Medicare program. These contractual arrangements are not federal financial assistance; furthermore, they deal with the federally-administered Medicare program. Consequently, the Department will exclude the program from coverage under these regulations. It should be noted that the statute permits States, at their option, to contract with the new organizations for conducting peer reviews under the Medicaid program. However, since this decision is within the States' purview, it will not affect the federal-state consultation system established by the Executive Order.

Comment.—Several States recommended that refugee and entrant assistance grants provided to national voluntary agencies be subject to these regulations.

Response.—The Department has not included these programs because their purpose is to assist the voluntary agencies to provide language training, employment counseling, job training and other services which will enable individual refugees and entrants to resettle in this country.

Comment—The Department received comments and petitions from individuals and organizations objecting to the inclusion of Head Start. These commenters were concerned that the program's inclusion would jeopardize its success by giving State and local elected officials more power to interfere with Head Start projects.

Response.—The Department has included the program under these regulations. We emphasize that coverage under these regulations merely provides State and local elected officials an opportunity to comment on Head Start projects through the State's single point of contact. If the single point of contact transmits a State process recommendation, the Department is obligated either to accept that recommendation, negotiate a mutually acceptable solution, or explain why it did not accommodate the State process recommendation. In any case, the final decision continues to rest with the Department; no additional authority to approve or disapprove specific projects is provided to State and local elected officials under these regulations.

Comment.—One commenter stated that Adoption Assistance should be excluded from coverage because, like

Title IV–E Foster Care, it is a financial transfer program for which HHS has no funding discretion or direct authority to approve specific sites or projects.

Response.—The Department agrees with this comment, and has removed the Adoption Assistance program from the list of programs subject to these regulations.

Comment.—One commenter objected to the inclusion of Cancer Construction and Venereal Disease Research, Demonstration and Public Information and Education Grants. This commenter objected to the inclusion of these two programs on the grounds that only those programs previously covered under A–95 should be included under the Order, and that any programs involving direct assistance to a non-governmental entity should be excluded from the Order.

Response.—The Department has decided to include these programs. Cancer Construction involves the construction of new facilities, which directly affects State and local governments. Venereal Disease Research, Demonstration and Public Information and Education Grants are often made for the purpose of improving specific public education and information programs carried out by state and local governments, and thus should be included.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act.

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. It is also unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a substantial economic impact on a significant number of small entities. This rule is not subject to the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 100

Intergovernmental relations.

Appendix—Section 401 of the Intergovernmental Cooperation Act of 1968, as amended; Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

BILLING CODE 4150-04-M

Section 401 of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506.

§6506. Development Assistance

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334.

§3334. Coordination of Federal aids in metropolitan areas.

(a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with the comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

BILLING CODE 4150-04-C

1. For the reasons set out in the Preamble, the Department of amends Title 45, Code of Federal Regulations, by adding a new Part 100, to read as follows:

PART 100—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 100.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 100.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Health and Human Services (HHS).

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of HHS or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 100.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the **Federal Register** a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 100.4 [Reserved]

§ 100.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 100.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 100.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities selected by a state process under § 100.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to detemine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal finanical assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development invovles a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

§ 100.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusal circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other

than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 100.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 100.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 100.6.

(b)(1) The single point of contract is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for review under a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 100.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 100.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

(f) If an applicant receives comments under § 100.9(a)(2), (c) or (d) of this Part, it must forward such comments to the Department with its application materials.

§ 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision as the Secretary in this or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unsual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written explanation 5 days after the date such notification is dated.

§ 100.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 100.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 100.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 100.12 How may a state simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 100.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

2. Subchapter D and Subchapter K, Chapter I, Title 42 of the Code of Federal Regulations is amended as follows:

TITLE 42—[AMENDED]

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

42 CFR Part 51c is amended as follows:

1. In § 51c.104, paragraph (b)(10) is revised to read as follows:

§ 51c.104 Application.

* * * * *

(b) * * *

(10) Evidence that all applicable requirements for review and/or approval of the application under Title XV of the Act have been met.

* * * * *

PART 52b—NATIONAL CANCER INSTITUTE CONSTRUCTION GRANTS

42 CFR Part 52b is amended as follows:

§ 52b.4 [Amended]

1. Section 52b.4, *Application*, is amended by removing paragraph (e).

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

42 CFR Part 55a is amended as follows:

§ 55a.4 [Amended]

Section 55a.4, *What must an application for a Black Lung Clinic grant contain?*, is amended by removing paragraph (e).

PART 56—GRANTS FOR MIGRANT HEALTH SERVICES

42 CFR Part 56 is amended as follows:

1. In § 56.104, paragraph (b)(12) is revised to read as follows:

§ 56.104 Application.

* * * * *

(b) * * *

(12) Evidence that all applicable requirements for review and/or approval of the application under title XV of the Act have been met.

* * * * *

PART 122—HEALTH SYSTEMS AGENCIES

42 CFR Part 122 is amended as follows:

1. In section 122.1, paragraph (b) is reserved as follows:

§ 122.1 Definitions.

* * * * *

(b) (Reserved)

2. In section 122.105, paragraph (a)(1)(vi) is revised to read as follows:

§ 122.105 Selection of agencies.

(a) * * *

(1) * * *

(vi) The adequacy of plans for developing working relationships with appropriate PSROs, State Agencies and Statewide Health Coordinating Councils; with health systems agencies which are designated for health services areas within the same standard metropolitan statistical area (as determined by the Office of Management and Budget) as the health service area for which the applicant is seeking designation; and with other planning bodies, and

* * * * *

3. In § 122.107, paragraphs (c)(11) (iii) and (iv) are reserved as follows:

§ 122.107 Full designation agreements.

* * * * *

(c) * * *

(11) * * *

(iii) (Reserved)

(iv) (Reserved)

* * * * *

4. In § 122.408, paragraph (b)(2) is revised to read as follows:

§ 122.408 Procedures for submission of application.

* * * * *

(b) * * *

(2) A copy of each application for a noncompeting continuation grant not subject to review under this subparagraph shall be provided by the applicant to the health systems agency at the time the application is submitted to the Federal funding agency.

* * * * *

5. In § 122.410, paragraph (a)(1)(v) is reserved as follows:

§ 122.410 Procedures for health systems agency review.

(a) * * *

(1) * * *

(v) (Reserved)

* * * * *

TITLE 45—[AMENDED]

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

45 CFR 244 is amended as follows:

1. In § 244.11 paragraphs (d)(1) (ii) and (iii) are reserved as follows:

§ 224.11 Annual State WIN plans.

* * * * *

(d) (1) * * *

(ii) (Reserved)

(iii) (Reserved)

* * * * *

PART 1351—RUNAWAY YOUTH PROGRAM

45 CFR Part 1351 is amended as follows:

1. In § 1351.17, paragraph (c) is revised to read as follows:

§ 1351.17 How is application made for a Runaway Youth Program grant?

* * * * *

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

Dated: June 17, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-16963 Filed 6-23-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Programs subject to the Provisions of Executive Order 12372, Intergovernmental Review of Federal Programs

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Final notice.

SUMMARY: This notice identifies the Department's programs that are subject to the provisions of Executive Order 12372 and the regulations at 45 CFR Part 100 (published elsewhere in today's Federal Register).

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Gordon Boe, Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Room 632–F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–6036.

SUPPLEMENTARY INFORMATION: On January 24, 1983, the Department published a Notice of Proposed Rulemaking to implement Executive Order 12372. As part of the NPRM, we published a list of the Department's programs that were proposed for coverage under the Executive Order and the regulations. We also published a list of programs that we proposed for exclusion. We solicited public comments on both lists.

This notice provides the final list of programs subject to the regulations at 45 CFR Part 100. In the future, if the Department proposes to change this list by adding or deleting programs, we will publish the proposed changes in the **Federal Register** for public comment.

The programs subject to the Executive Order and 45 CFR Part 100 are:

13.217 Family Planning Projects
13.224 Community Health Centers
13.246 Migrant Health Centers Grants
13.258 National Health Service Corps
13.260 Family Planning Services
13.268 Immunization
13.293 State Health Planning and Development Agencies
13.294 Health Systems Agencies
13.392 Cancer Construction
13.600 Head Start
13.623 Runaway Youth
13.628 Child Abuse
13.630** Developmental Disabilities—Basic Support and Advocacy Grants
13.631 Developmental Disabilities—Special Projects
13.633** Aging—Title III A & B—Grants for Supportive Services and Senior Centers
13.635** Aging, Title III C—Nutrition
13.645** Child Welfare Services—State Grants
13.646** WIN
13.676 Surplus Property Utilization
13.965 Black Lung Clinics
13.977 Venereal Disease
13.978 Venereal Disease Research, Demonstration and Public Information and Education Grants
13.985 Eye Research—Construction
13.987 Health Programs for Refugees
13.988 Cooperative Agreements for State-Based Diabetes Control Programs
13.990 National Health Promotion Training Network
13.995 Adolescent Family Life Demonstration Program
None Cuban-Haitian Special Placement
None Refugee Assistance Targeted Assistance Grants to States
None Entrant Assistance Targeted Assistance Grants to States

Dated: June 17, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 83-16064 Filed 6-23-83; 8:45 am]

BILLING CODE 4150-04-M

**Closed-ended formula grant programs to the States.

federal register

Friday
June 24, 1983

Part IX

Department of Housing and Urban Development

Office of the Secretary

Intergovernmental Review of HUD Programs and Activities; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 52, 570, 590, 595, 600, 720, 841, 870, 880, 881, 883, 885 and 891

[Docket No. R-83-1070]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs and activities of the Department of Housing and Urban Development. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, Room 10140, Department of Housing and Urban Development, Washington, D.C., (202) 755-6560 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 24, 1983, 26 federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. On February 23, 1983 (48 FR 7668), this Department published an NPRM to carry out the Executive Order. Subsequently, one more agency published an NPRM, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 49 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the federal government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can then submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "State process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-By-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	*Final rule (section)*
52.1	52.1.
52.2	52.2.
52.3	52.3.
52.4	52.4.
52.5(a)	52.6(b).
52.5(b)	52.6(d).
52.5(c)	52.6(c).
52.6(a)	52.6(b).
52.6(b)	52.7(a).
52.6(c)	52.8(a).
52.6(d)	Deleted.
52.6(e)	52.9.
52.7(a)	52.10(a).
52.7(b)	52.10(b), (c).
52.8	52.11.
52.9	52.12.
52.10	52.13.

Portions of the final rule not listed in this table (§§ 52.5, 52.6(a), 52.7(b), and 52.8(c)) are new.

Section 52.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act of 1968 (section 401) as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (section 204). The texts of sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue. (See Supplementary Information section of USDA's document.)

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statues. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Subsection (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and

recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 52.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to draft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 52.10 In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department deliberated whether to include a definition of the term "state process recommendation." The Department concluded a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 52.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to § 52.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the federal government to exclude any programs or activities from coverage under the Order and these regulations, and that the elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide no-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., CFDA Nos. 14.168 Land sales and 14.171 Manufactured Housing). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic federal government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the federal governments, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were

proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a seperate notice rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 52.4 What are the Secretary's general responsibilities under the Order?

There were no substative comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 52.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 52.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 52.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 52.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 52.7, discussed below.

Section 52.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates material from paragraphs § 52.3 of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by

commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 52.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 52.6(c) of the NPRM (redesignated § 52.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance under the covered mortgage insurance programs and the Urban Development Action Grant program, for which the comment period would remain 30 days. The UDAG program funds eight times a year and the entire selection process cannot exceed 60 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 52.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key element in any timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 52.6 of the NPRM has been dropped. A new § 52.9 of the final rule describes how the Secretary receives and responds to comments.

Section 52.9 How does the Secretary receive and respond to comments?

This new section replaces § 52.6(d) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 52.6(d) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish

each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 52.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the federal government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undersirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-days review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 52.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation or a particular program or project will be seen and considered by the Department. The Department may request that all comments be transmitted with the state process recommendation.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure concerned officials that their views are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to fully consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state

processes have the option of also sending comments through the applicant to the federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 52.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accomodate or explain comments that: (1) Do not compose or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "making efforts to accommodate or explain" a state process recommendation means: (1) Accepting that recommendation, (2) reaching a mutually agreeable solution through the state process, or (3) giving the state a timely, simple explanation of the Department's decision. In response to a substantial number of comments, § 52.(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 52.11 What are the Secretary's obligations in interstate situations?

This section is based on § 52.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except covered mortgage insurance programs.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments has been delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 52.12 [Reserved]

This section has been reserved since the Department currently administers no programs which require submission of state plans.

Section 52.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare

instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the waiver will be written and will be made only on a determination of good cause supported by reasons and facts. The Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Managment and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies, would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

Scope Issue—Background

In its NPRM, the Department provided a List of Proposed Exclusions from Scope and a List of Proposed Inclusions. These two lists identified all HUD programs contained in the Catalogue of Federal Domestic Assistance. Fifty-nine programs were proposed for exclusion and ten for inclusion.

The programs proposed for exclusion were the following:

(1) All 23 of the single family mortgage insurance programs (CFDA Nos. 14.105, .108, .110, .117 through 123, .125, .130, .132, .133, .140, .142, .152, .159, .161, .162, .165, and .166).

(2) All 21 of the multifamily mortgage insurance programs and related programs (CFDA Nos. 14.103, .112, .115, .116, .124, .126 through .129, .134, .135, .137, .138, .139, .149, .151, .153, .154, .155, .164, and .167).

(3) Two of six assisted housing programs (CFDA Nos. 14.156 Existing Housing component of the Section 8 program, and 14.157 Housing for the Elderly and Handicapped).

(4) Five of seven community planning and development programs (CFDA Nos. 14.218 CDBG Entitlement Grants, 14.220 Section 312 Rehabilitation Loans, 14.222 Urban Homesteading, 14.228 CDBG, State's Program and 14.229 CDBG Discretionary Fund).

(5) Three of four fair housing and equal opportunity programs (CFDA Nos. 14.400 Equal Opportunity in Housing, 14.402 Nondiscrimination in Federally-Assisted Programs, and 14.403 Community Housing Resource Board Program).

(6) Five of six miscellaneous programs (CFDA Nos. 14.141 Nonprofit Sponsor Assistance Program, 14.168 Land Sales, 14.171 Manufactured Housing—Mobile Home Construction, 14.207 New Communities—Loan Guarantees, and 14.506 General Research and Technology Activity).

The ten programs proposed for inclusion were the following:

(1) Five of six assisted housing programs (CFDA Nos. 14.146 Low Income Housing—Assistance Program, 14.147 Low Income Housing—Homeownership Opportunities for Low Income families, 14.156 all components of the Section 8 program except Existing Housing, 14.158 Comprehensive Improvement Assistance Program, and 14.170 Congregate Housing).

(2) Two of six community planning and development programs (CFDA Nos. 14.219 CDBG Small Cities Program and 14.221 Urban Development Action Grants Program).

(3) One of three fair housing and equal opportunity programs (CFDA No. 14.401 Fair Housing Assistance Program).

(4) Two of five miscellaneous programs (CFDA Nos. 14.169 Housing Counseling Program, 14.211 Surplus Land for Low and Moderate Income Housing).

The Department received 49 comments concerning the proposed program inclusions and exclusions. Seven commenters urged that CFDA No. 14.401 Fair Housing Assistance Program, and one commenter urged that CFDA No. 14.221 Urban Development Action Grants Program, be excluded from the scope of this rule.

Forty-one commenters made either general objections to the Department's proposed exclusions or requested that specific programs be included within the scope of this rule. The Department received specific inclusion requests for every program proposed for exclusion except the following: CFDA 14.168 Land Sales, 14.171 Manufactured Housing, 14.402 Nondiscrimination in Housing and 14.506 General Research and Technology.

Many of the comments which raised a general objection to the proposed exclusion objected to the Department making any decision concerning program inclusion. These comments are addressed *supra* under the discussion of § 52.3.

Final Scope Decisions

After considering the public comment the Department has determined to include 23 programs within the scope of this rule as follows:

(1) Twelve insured housing programs, including CFDA No. 14.125 Land Development and eleven of the 21 multifamily mortgage insurance programs. (CFDA Nos. 14.112, .115, .124, .126, .127, .134, .135, .137, .138, .139 and .151). Applications for insurance of advances on multifamily mortgage projects with 200 or more units in urbanized areas and 50 or more units in nonurbanized areas are subject to these rules.

(2) All six of the assisted housing programs (CFDA Nos. 14.146, .147, .156, .157, .158 and .170). Applications under the public housing programs and Section 8 programs (CFDA Nos. 14.146, .147 and .156) are subject to this rule if they are for projects with 50 or more units in urbanized areas and 25 or more units in nonurbanized areas. Applications under CFDA No. 14.157 Housing for the Elderly or Handicapped would be subject to these rules if they are for projects with 200 or more units in urbanized areas and 50 or more units in nonurbanized areas.

(3) Two of six community planning and development programs (CFDA Nos. 14.218 CDBG Entitlement Grants and 14.221 Urban Development Action Grants). CFDA No. 14.219 CDBG Small Cities Program is the only program proposed for inclusion that is not in the final list of included programs. The Entitlement Program proposals will be subject to the intergovernmental review process if they appear to involve activities covered by Sec. 204 of the Demonstration cities and Metropolitan Development Act of 1966.

(4) There is no change from the NPRM with respect to the fair housing and equal opportunity programs. CFDA No. 14.401 Fair Housing Assistance Program remains included. Coverage, however, is limited to applications to Type II competitive component of this program.

(5) There is no change from the NPRM as to which miscellaneous programs are included. CFDA Nos. 14.169 Housing Counseling Program and 14.211 Surplus Land Program are included. The thresholds for the Surplus Land Program are the 200/50 units thresholds applicable to the multifamily mortgage insurance programs unless financial assistance is to be provided under one of the assisted housing programs with 50/25 units thresholds in which case the lower thresholds apply.

Response to Comments—Mortgage Insurance Programs

With respect to the mortgage insurance programs, several commenters requested that all or most of these programs be covered by the intergovernmental review process. They objected to the proposed exclusions being based on the fact that the programs involved essentially private transactions. One commenter noted that while purely local concerns may be considered through the requirement that the housing meet local zoning ordinances and building codes, the regional impacts of the housing may be overlooked. Another commenter suggested that intergovernmental review would reduce the Department's mortgage risk.

The commenters' objections were generally coupled with a recommendation that program exclusions should be based on whether the projects or activities funded under the program would have a significant impact on the area and its community development. Certain commenters pointed out that this standard is based on the express language of the Intergovernmental Cooperation Act of 1968. One commenter urged in this regard that program coverage should include any program that involves substantial construction, rehabilitation or alteration of the natural environment.

The Department agrees that the ultimate question in determining the issue of program inclusion is whether the federal financial assistance provided under the program could have a significant impact on an area and its community development. The Department also acknowledges that too much emphasis may have been placed in the NPRM on the nature of the participants.

Nonetheless, the Department disagrees with the commenters who urged including the single family mortgage insurance programs. These programs provide no federal financial assistance for the construction of the housing involved. HUD single family mortgage insurance merely provides an alternative source of financing to the ultimate individual homebuyer once the housing has been constructed. The housing is developed with no federal assistance and can be constructed regardless of whether or not HUD determines that mortgage insurance will be available to eligible purchasers.

In contrast, HUD under certain multifamily mortgage insurance programs insures the mortgage advances which finance the construction of projects. The eligibility of the project for mortgage insurance is usually essential for the project to proceed.

The Department has included, within the scope of this rule, its multifamily mortgage insurance programs to the extent they involve insuring mortgages to finance the construction or substantial rehabilitation of projects containing 200 or more units in urban areas and 50 or more units in nonurban areas. The thresholds are intended to assure that the review process is directed toward projects which could have a significant impact on an area.

The Department has not included CFDA Nos. 14.116 Mortgage Insurance—Group Practice Facilities, 14.128 Mortgage Insurance—Hospitals or 14.129 Mortgage Insurance—Nursing Homes. Applications under these programs require approval by local Health Systems Agencies or other cognizant state entities which provide a mechanism for intergovernmental review. In addition, the feasibility of applications for mortgage insurance for hospitals is determined by the Department of Health and Human Resources under CFDA No. 13.293 State health Planning and Development Agencies which is subject to the intergovernmental review process. Any HUD requirement for review under the Executive Order would be duplicative of this prior review.

Assisted Housing

Several commenters raised the same objections to the proposed exclusion of CFDA 14.157 Housing for the Elderly and Handicapped that were raised with respect to the mortgage insurance programs. The Department has made this program subject to this rule and has applied the same 200/50 unit thresholds applicable to the multifamily mortgage insurance programs. In addition the Department will use thresholds of 50 or more units in an urbanized area and 25 or more units in nonurbanized areas with respect to the assisted housing programs that involve new construction

and substantial rehabilitation (CFDA Nos. 14.146, .147 and .156).

Community Planning and Development

The Department received serveral comments requesting inclusion of each of the CDBG programs (CFDA Nos. 14.218, 14.219, 14.228, 14.229). The Department of HUD proposed to exclude all but CFDA No. 14.228 HUD administered Small Cities Program.

Those commenters who stated reasons in support of their request for inclusion of these programs stressed the fact that these programs have a significant impact on the areas involved. The Department has no argument with this point. The basis for the proposed exclusion of three of these programs is not that the programs have little impact on the areas involved but that the Department has little or no funding discretion or direct authority to approve specific site or projects.

The Order and this rule have been revised since publication of the NPRM to state expressly that they implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Since assistance under the Entitlement Program is sometimes provided for water and sewer type facilities covered by section 204, HUD has made this program subject to this rule with respect to those portions of final statements which consist of planning or construction of a water or sewer facility in a metropolitan area.

The Department has determined to exclude CFDA No. 14.219 CDBG Small Cities Program because 46 states have opted to administer a small cities program under CFDA No. 14.228 State's Program. It is anticipated that the State's Program ultimately will completely replace the Small Cities Program. However, if a number of states, as is their option, discontinue administering the State's Program, the Department will consider, at a future time, adding the Small Cities Program to the list of included programs.

Fair Housing and Equal Opportunity

The Department received seven comments urging the CFDA 14.401, Fair Housing Assistance Program be excluded from the scope of this rule. The commenter argued that this program should be excluded because:

1. There are several layers of local review under current procedures of "substantially equivalent" FHAP agencies;

2. The review process could be abused to favor state agencies over local agencies;

3. The review process could be abused to interfere with civil rights enforcement activities;

4. State and local elected officials currently have a level of control over whether a state or local agency is eligible for Fair Housing Assistance;

5. The nature of the FHAP programs is such that there is little purpose to be served by the review process.

The Department does not believe that the concerns of abuse are well founded. The intergovernmental review process is a statutorily and Executive Order based process for obtaining the view of entities, including state and local elected officials concerning federal decisions which significantly affect their areas. The ultimate funding decisions remain with the federal government and must conform to program criteria. The Department sees no reason why commenters under the process would attempt to misuse this process and even if biased comments were received, the Department sees little risk that they would interfere with the Department's ability to administer the program in accord with applicable standards.

The Department also believes that the arguments concerning the existence of review and of state and local control, under current state and local procedures is directed more appropriately to the state's decision to select this program.

The Department believes, with respect to the type I noncompetitive component of the FHAP program, that the commenters are correct in their claims that little purpose would be served by making these applications subject to this rule. Funding under this component is formula based and is basically dependent on the number of housing complaints processed by the agency in the preceding year. Furthermore, program participants simply perform a function which otherwise would be carried out by the Department. Accordingly, the Department has modified its program inclusion to indicate that only applications under the type II competitive component of the FHAP program are subject to this rule. However, since the type II FHAP component is a national competition, with final selection based upon a ranking of all proposals against one another, the Department foresees the possibility that some states may not choose to designate this program for review. Where it has been designated, HUD will consider any comments that may be offered by individual states or by localities in light of the national criteria and ranking factors to be used to select proposals to be forwarded.

Miscellaneous Programs

Several commenters listed CFDA No. 14.141 Non profit Sponsor Assistance Program as a program that should be included under the scope of this rule. In each of these comments the program was included in a list of other programs which the commenter wanted included. None of the commenters provided reasons for inclusion that were specifically related to this program. The Department believes that including the Housing for Elderly and Handicapped Program (CFDA No. 14.157) eliminates any need to include this program since it only provides seed money to sponsors of elderly and handicapped projects.

Several commenters included CFDA No. 14.207 New Communities in their lists of programs to be included under the scope of the rule. The Department has not included the program because it has been phased out and the Department is not accepting any new applications.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 12291

This final rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda

This rule was listed at 48 FR 18065 as Item S–1–83 in the Department's Semiannual Agenda or Regulations published on April 25, 1983, pursuant to

Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are: 14.146, 14.156, 14.207, 14.218, 14.221, and 14.229.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 52

Intergovernmental relations.

24 CFR Part 570

Community development block grants, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs—housing and community development.

24 CFR Part 595

Community development, Grant programs—housing and community development, Urban renewal.

24 CFR Part 600

American Samoa, Community facilities, Energy conservation, Environmental protection, Grant programs—housing and community development, Guam, Housing, Intergovernmental relations, Northern Mariana Islands, Pacific Islands Trust Territory, Virgin Islands.

24 CFR Part 720

Grant programs—housing and community development, Loan programs—housing and community development, New communities, Technical assistance, Securities, Community development, Housing.

24 CFR Part 841

Loan programs—housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 870

Public housing.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Low- and moderate-income housing.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Low-and moderate-income housing.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 885

Aged, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low-and moderate-income housing.

24 CFR Part 891

Grant programs—housing and community development, Intergovernmental relations, Housing.

For the reasons set out in the preamble, the Department of Housing and Urban Development amends Title 24, Code of Federal Regulations as follows:

1. Part 52 is revised to read as follows:

PART 52 INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 52.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 52.5 What definitions apply to these regulations?

"Department" means the U.S. Department of Housing and Urban Development.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Housing and Urban Development or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 52.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 52.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 52.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 52.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the Federal Register in accordance with § 52.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 52.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 52.6, the Secretary, to the extent permitted by law—

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance or direct federal development if—

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

§ 52.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities—

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance under a covered mortgage insurance program or under the Urban Development Action Grant Program.

(2) At least 60 days from the date established by the Secretary to comment on proposed federal financial assistance other than under a covered mortgage insurance program.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 52.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 52.10 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 52.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials

and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 52.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 52.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 52.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of its decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that—

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 52.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for—

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 52.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 52.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 52.12 [Reserved]

§ 52.13. May the Secretary waiver any provision of these regulations?

Upon determination of good cause, the Secretary may waive any provision of these regulations. Every waiver is in writing and sets forth the facts and reasons upon which the Secretary relies in waiving the provisions.

PART 50—PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

2. In § 50.25, the introductory text is revised to read as follows:

§ 50.25 Public participation.

HUD shall inform the affected public about NEPA-related hearings and public meetings and environmental documents. Project actions which result in a FONSI normally require only notification to the state process adopted under part 52 of this chapter, "Intergovernmental Review of Department of HUD Programs". In all cases HUD shall mail notices to those who have requested them. Additional efforts for involving the public in specific notice or compliance requirements shall be made in accord with the NEPA-related statutes and Executive Orders and their implementing procedures identified in § 50.4.

* * * * *

3. In § 50.31, paragraph (c) is revised to read as follows:

§ 50.31 Environmental assessments.

* * * * *

(c) Comments received from the state process adopted under part 52 of this chapter, "Intergovernmental Review of HUD Programs" or from states and local environmental agencies shall be considered in the preparation of the EA and be reported in any Draft EIS when it is circulated for review.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

§§ 570.310, 570.312, 570.400 and 570.403 [Amended]

4. In Part 570, §§ 570.310, 570.312(g), 570.400(d), and 570.403(c)(5) are removed and reserved.

PART 590—URBAN HOMESTEADING

§ 590.11 [Amended]

5. In § 590.11, paragraph (c) is removed and reserved.

PART 595—NEIGHBORHOOD SELF-HELP DEVELOPMENT PROGRAM

§ 595.109 [Removed and Reserved]

6. In Part 595, § 595.109 is removed and reserved.

PART 600—COMPREHENSIVE PLANNING ASSISTANCE

§§ 600.7, 600.160, 600.170, and 600.250 [Amended]

7. In Part 600, §§ 600.7(j), 600.160, 600.170, and 600.250(c) are removed and reserved.

PART 720—FINANCING PUBLIC AND PRIVATE NEW COMMUNITY DEVELOPMENT

§ 720.43 [Removed and Reserved]

8. In Part 720, § 720.43 is removed and reserved.

PART 841—PUBLIC HOUSING DEVELOPMENT

9. In § 841.405, paragraph (b) is revised to read as follows:

§ 841.405 Technical processing and approval.

* * * * *

(b) *Technical Processing.* Upon determining that a proposal is acceptable for technical processing, the field office shall:

(1) Send a notification to the chief executive officer (or designee) of the unit of general local government pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439), inviting a response within thirty (30) calendar days from the date of the field office transmittal letter;

(2) Evaluate the proposal to determine compliance with all program requirements and, if applicable, the comments received from the unit of general local government;

(3) Complete an environmental review in accordance with the requirements of

the National Environmental Policy Act of 1969; and

(4) Determine the appraised value of the site or property.

* * * * *

PART 870—PHA-OWNED PUBLIC HOUSING PROJECTS—DEMOLITION OF BUILDINGS OR DISPOSITION OF REAL PROPERTY

§ 870.9 [Removed and Reserved]

10. In Part 870, § 870.9 is removed and reserved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

11. In § 880.302, paragraph (c) is revised to read as follows:

§ 880.302 Procedures for resumption of processing of proposals and preapproved site requests.

* * * * *

(c) *Section 213 Clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

* * * * *

12. In § 880.304 paragraph (e) is revised to read as follows:

§ 880.304 Publication of NOFA and receipt of proposals.

* * * * *

(e) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the local government for review or, in the case of projects for elderly families, until the deadline dated has passed, whichever is earlier.

* * * * *

13. In § 880.306, paragraph (c) is revised to read as follows:

§ 880.306 Preliminary evaluation and technical processing.

* * * * *

(c) *Technical Processing.*

(1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, design, experience of the owner and other participants, local government comments, extent of displacement and feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

* * * * *

14. In § 880.307, paragraphs (b) and (d) are revised to read as follows:

§ 880.307 Selection of proposals and use of remaining or additional contract authority.

* * * * *

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals. The ranking factors are: rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

* * * * *

(d) Units of general local government notified under § 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

15. In § 881.302, paragraph (c) is revised to read as follows:

§ 881.302 Procedures for resumption of processing of proposals and preapproved site requests.

* * * * *

(c) *Section 213 clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

* * * * *

16. In § 881.304, paragraph (f) is revised to read as follows:

§ 881.304 Publication of NOFA and receipt of proposals.

* * * * *

(f) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

17. In § 881.306, paragraph (c) is revised to read as follows:

§ 881.306 Preliminary evaluation and technical processing.

* * * * *

(c) *Technical processing.* (1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, physical condition of the property, its suitability for rehabilitation and whether or not the work proposed is adequate and can be feasibly accomplished; overall design; experience of the owner and other participation, and local government comments, extent of displacement

feasibility or relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR, Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

* * * * *

18. In § 881.307, paragraphs (b) and (d) are revised to read as follows:

§ 881.307 Selection of proposals and use of remaining or additional contract authority.

* * * * *

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals. The ranking factors are: rents; site (including minority concentration consideration); design; suitability and potential of property for rehabilitation and adequacy of rehabilitation proposed; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage association under authority of section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

* * * * *

(d) Units of general local government notified under § 881.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

* * * * *

§§ 881.704 and 881.707 [Amended]

19. In Part 881, §§ 881.704(b), 881.707 (f) and (j) are removed and reserved.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

20. In § 883.403, paragraph (b) is revised to read as follows:

§ 883.403 HFA submission of proposals.

* * * * *

(b) *Previous Participation; Review and Comment by Local Government.* (1) The HFA and the HUD field office may, where feasible, develop procedures by which the previous participation review, and the local government review and comment under Part 891 are initiated prior to Proposal submission. The Proposal may not be approved until the HUD field office has received a copy of the response from the Chief Executive Officer of the unit of general local government where appropriate, pursuant to 24 CFR Part 891.

(2) If special procedures as described in paragraph (b)(1) of this section are not adopted, the HUD field office will conduct its previous participation review or initiate Part 891 review and comment procedures after the Proposal has been submitted.

* * * * *

21. In § 883.405, paragraph (b) is revised to read as follows:

§ 883.405 Notification of acceptability of proposal.

* * * * *

(b) *Notification.* The unit of general local government must be notified by HUD of its final action at the time the HFA is notified.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

22. In § 885.220, paragraph (d)(1) is removed, paragraphs (d) (2), (3), (4), (5) and (6) are redesignated as (d) (1), (2), (3), (4) and (5) and newly designated paragraphs (d)(2) and (e) are revised to read as follows:

§ 885.220 Review of application for fund reservation.

* * * * *

(d) *Technical Processing.* When an Application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) * * *

(2) The Application will be evaluated by the field office on the basis of those factors which may be necessary to determine the eligibility and acceptability of the Sponsor and Borrower, acceptability of the location (site), acceptability of the design concept, compliance with the Fair Market Rent Limits, and the comments, if any, received during the response period from the appropriate unit of general local government.

* * * * *

(e) For each allocation area, the field office shall rank in order each Application on the basis of its assessment of the Borrower's qualifications, the proposed site, the design concept, and the comments, if any, received from the unit of general local government. The field office shall identify for selection the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in any allocation area under the allocation of fund authority: *Provided,* however, That in accordance with 24 CFR 891.404(d) priority will be given to acceptable Applications from localities which did not previously receive assistance.

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

23. In § 891.202, paragraph (b)(7) is removed and reserved and the introductory text to paragraph (a) is revised to read as follows:

§ 891.202 Notification of local government.

(a) The field office shall notify the chief executive officer of the local government having a HAP, no later than ten working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing), that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(b) * * *

(7) [Reserved]

24. In § 891.205, paragraph (b) is revised to read as follows:

§ 891.205 HUD review of application for housing assistance.

* * * * *

(b) *Review process.* The field office finding of consistency or inconsistency shall be based on the information provided in the HAP, the application for housing assistance, and an analysis of the comments of the local government, including comments submitted by the chief executive officer on behalf of the local government.

* * * * *

25. In § 891.303, paragraph (b)(3) is removed and reserved and the introductory text to paragraph (a) is revised as follows:

§ 891.303 Notification of local government.

(a) The field office shall notify the chief executive officer no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing) that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

* * * * *

(b) * * *

(3) [Reserved]

26. In § 891.305, paragraph (b) is revised to read as follows:

§ 891.305 HUD review of applications for housing assistance.

* * * * *

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government including comments submitted by the chief executive officer on behalf of the local government. The field office shall make an independent determination as to whether there is a need for housing assistance and whether facilities and services are adequate before approving the application.

* * * * *

Dated: June 16, 1983

John J. Knapp,

Acting Secretary, Housing and Urban Development.

[FR Doc. 83-16643 Filed 6-23-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-83-1253]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Notice Identifying Programs Subject ot 24 CFR Part 52 Intergovernmental Review of Department of Housing and Urban Development Programs and Activities.

SUMMARY: This Notice identifies those HUD programs which provide federal financial assistance that are subject to the intergovernmental review process contained in 24 CFR Part 52. It also indicates for certain programs thresholds or other matters defining the activities, under these programs, that are subject to the intergovernmental review process.

FOR FURTHER INFORMATION CONTACT: Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, Room 10140, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 755-6480. This is not a toll-free number.

EFFECTIVE DATE: September 30, 1983.

SUPPLEMENTARY INFORMATION: The Department is issuing a final rule in today's **Federal Register** amending 24 CFR Part 52 to implement Executive Order 12372, "Intergovernmental Review of Federal Programs." Section 52.3 of the rule provides that the Secretary will publish in the **Federal Register** a list of the Department's programs and activities that are subject to Part 52. Section 52.3 provides further that the list will identify with an asterisk (*) those programs that are subject to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

This Notice in accordance with 24 CFR 52.3 identifies the progams and activities subject to Part 52. This Notice is effective September 30, 1983, the effective date of the amended Part 52 rule.

The Notice of Proposed Rulemaking (48 FR 7688, February 23, 1983) proposing to amend Part 52 contained two lists of HUD programs: those programs proposed to be subject to Part 52 procedures and those programs proposed to be excluded from the scope of Part 52. The Notice of Proposed Rulemaking sought public comment on these proposals. The preamble to the final rules in today's **Federal Register** responds to those comments.

The Department will seek public comment on future changes in the list of programs subject to 24 CFR Part 52.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Executive Order 12372, July 14, 1982 (47 FR 30959), amended April 18, 1983 (48 FR 15887)).

Dated June 16, 1983.

John J. Knapp,

Acting Secretary, Housing and Urban Development.

HUD Programs Subject to 24 CFR Part 52, Intergovernmental Review of HUD Programs

(Programs marked with an asterisk (*) are subject to Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966)

Insured Housing

CFDA No.	24 CFR part	Program name
14.112	234	Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects.
14.115	213	Mortgage Insurance—Development of Sales Type Cooperative Projects.
14.124	213	Mortgage Insurance—Investor Sponsored Cooperative Housing.
14.125	205	Mortgage Insurance—Land Development and New Communities.
14.126	213	Mortgage Insurance—Management Type Cooperative Projects.
14.127	207	Mortgage Insurance—Manufactured (Mobile) Home Parks.
14.134	207	Mortgage Insurance—Rental Housing.
14.135	221	Mortgage Insurance—Rental Housing for Moderate Income Families.
14.137	221	Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate.
14.138	231	Mortgage Insurance—Rental Housing for the Elderly.
14.139	220	Mortgage Insurance—Rental Urban Renewal.
14.151	241	Supplemental Loan Insurance—Multifamily Rental Housing.

An application under these programs is subject to Part 52 procedures if it involves insurance of advances for the construction or substantial rehabilitation of a project containing 200 or more units in an urbanized area or 50 or more units in a nonurbanized area. There are no thresholds for applications under CFDA No. 14.125.

Assisted Housing

CFDA No.	24 CFR part	Program name
14.146	841	Low Income Housing—Assistance Program.
14.147	804	Low Income Housing—Homeownership Opportunities for Low Income Families.
14.156	880, 881, 883, 884, and 886.	Low Income Housing Assistance Program.
14.157	885	Housing for the Elderly or Handicapped.
14.158	868	Public Housing—Comprehensive Improvement Assistance Program.
14.170		Congregate Housing Services Program.

An application under CFDA Nos. 14.146, .147, or .156 is subject to Part 52 procedures if it involves the construction or substantial rehabilitation of a project containing 50 or more units in an urbanized area or 25 or more units in a nonurbanized area.

An application under CFDA No. 14.157 is subject to Part 52 procedures if it involves the construction or substantial rehabilitation of a project containing 200 or more units in an urbanized area or 50 or more units in a nonurbanized area.

Community Planning and Development

CFDA No.	24 CFR part	Program name
14.218	570	Community Development Block Grants/Entitlement Grants*.
14.221	570	Urban Development Action Grants*.

*Only those portions of final statements under CFDA No. 14.218 that consist of planning or construction of a water or sewage facility in a metropolitan area are subject to Part 52 procedures. HUD may be unable to accommodate state process recommendations concerning particular activities since HUD has only limited authority to refuse to fund an eligible activity.

Fair Housing and Equal Opportunity

CFDA No.	24 CFR part	Program name
14.401	111	Fair Housing Assistance Program.

An application under CFDA No. 14.401 is subject to Part 52 procedures if it is for type II—competitive funding.

Miscellaneous Programs

CFDA No.	24 CFR part	Program name
14.169		Housing Counseling Program.
14.211		Surplus Land for Low and Moderate Income Housing.

An application under CFDA No. 14.211 is subject to Part 52 procedures if it involves the construction or rehabilitation of a project containing 200 or more units in an urbanized area or 50 or more units in a nonurbanized area unless assistance is to be provided under an assisted housing program with 50 and 25 unit thresholds in which case the lower thresholds apply.

[FR Doc. 83-16844 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part X

Department of the Interior

Office of the Secretary

Intergovernmental Review of the Department of the Interior Programs and Activities; Final Rule and

Relationship of Interior Programs to E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities; Notice

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 9

Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of the Interior. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

DATE EFFECTIVE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Office of Acquisition and Property Management, Division of Acquisition and Grants, 18th and C Streets, N.W., Washington, D.C. 20240 (202) 343-6431.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3152), the Department of the Interior along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. On March 24, 1983 (48 FR 12409) the Department published a notice in the **Federal Register** which contained a list of programs under which states may opt to use the E.O. 12372 process and a list of programs with existing consultation processes. This notice extended the comment period to April 1, 1983. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 19 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 5587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

—A means of consulting with local officials; and,

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures. For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation. A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
9.1	9.1.
9.2	9.2.
9.3(a)	9.3(a).
9.3(b)	9.7(a).
9.3(c)	9.3(b).
9.4	9.4.
9.5(a)	9.6(b).
9.5(b)	9.6(d).
9.5(c)	9.6(c).
9.6(a)	9.6(b).
9.6(b)	9.7(a).
9.6(c)	9.6(a).
9.6(d)	Deleted.
9.6(e)	9.9.
9.7(a)	9.10(a).
9.7(b)	9.10(b), (c).
9.8	9.11.
9.9	9.12.
9.10	9.13.

Portions of the final rule not listed in this table (§§ 9.5, 9.6(a), (9.7(b), and 9.8(c)) are new.

Section 9.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing Section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements.

The text of Section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (See Supplementary Information Section USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also Section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section. A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive

Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilitie under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 9.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 9.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 9.3 What programs and activities of the Department are subject to these regulations?

Paragraphs (a) and (b) of this section are substantively very similar to paragraphs 3(a) and (c) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. While the Department did not propose any exclusions, we did propose to continue existing consultation processes and published a list of programs and activities with such processes on March 24, 1983 (48 FR 12409). Based on comments received by the Department and discussed in detail in that section of the preamble covering scope issues, the Department's rule continues to require use of existing consultation processes as proposed. To provide information on the activities and programs eligible for selection using this rule, the Department is publishing a listing of programs and activities eligible for E.O. 12372 process use. This information is being published as a separate list rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 9.4 [Reserved]

Section 9.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 9.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 9.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 9.5 of the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, or short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 9.7, discussed below.

Section 9.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates materials from §§ 9.3(b) and 9.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject ot the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department mus pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this comunication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of Section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 9.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 9.6(c) of the NPRM (redesignated § 9.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30

days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 to 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional or local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 9.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 9.6 of the NPRM has been dropped. A new § 9.9 of the final rule describes how the Secretary receives and responds to comments.

Section 9.9 How does the Secretary receive and respond to comments?

This new section replaces § 9.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 9.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact of expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition of concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations Section 401 of the Intergovernmental Cooperation Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate of explain" procedures of § 9.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly

aided when a single, unified position is presented for response. However, several commenters said that is would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in section 9.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as Section 401 specifies, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, regional and local officials and entities may submit comments to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from Section 401. A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process should be sent to the applicant before the application is forwarded and that the applicant should attach these to the application, that the state process should be able to require a "notice of intent," that federal agencies should not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies should have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such a conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of the

communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated that what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 9.11 What are the Secretary's obligations in interstate situations?

This section is based on § 9.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments has been delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 9.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Department and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary uses of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's **Federal Register** and will be updated periodically.

Section 9.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements and coastal zone management would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Department received 19 comments dealing specifically with the programs of the Department or the scope of those programs as treated in the proposed rules. Of these 19 comments, three commenters contributed a total of six comments, each of them submitting two separate comments. The comments ranged from local governments to State governments.

Seven commenters wrote to the Department before its lists of programs were available, essentially asking for the lists. The Department's lists were published in the **Federal Register** on March 24, 1983 (48 FR 12409). One of these commenters later said that it agreed with the list of programs, and with those which it could opt to use under Executive Order 12372, and agreed to incorporate existing consultation processes in its own State process. Two of the commenters included separate, but identical, lists of programs which they suggested should be available for use under the Executive Order process. The Department's list of programs under the process included all of those programs. Another of the commenters suggested that the list when finally published be standardized. Since programs vary from agency to agency, the Department does not believe that a standardized list can serve any useful purpose toward the implementation of the Executive Order. Finally, one of these commenters later stated that it would like to reserve the right to integrate or suggest adaptations to existing processes so as to include them within its State's process. The Department is not adverse to discussing these concepts in cases where existing processes actually do not meet the intent of the Executive Order.

One commenter suggested that the Department include section 9.4 in its rules as other agencies proposed to do, rather than reserve it. This section was an optional section, and the concepts contained therein were proposed for inclusion in sections 3b and 5b. The Department has decided not to change its choice.

One commenter requested the exclusion of Indian programs from coverage of the Executive Order. Since its inception, the Executive Order has been conceived as exempting federally recognized tribes from its coverage. In its proposed rule making, the Department assumed that this was understood. In the interest of clarity, however, the Department is excluding all programs for the benefit of Indian tribes. In addition, those programs which are designed solely for the benefit of the territories of the United States and the Trust Territory of the Pacific Islands are similarly excluded. Those programs affecting the territories are ones in which there is close cooperation between the individual territories and the Department through the Federal budgeting process. The territories submit budgets to the United States,

which are then passed through the President's Budget to the Congress and acted on by that body. The money appropriated to each of the territories is then passed back to the territories through the Department. It is the Department's belief that this process works well, and it was not the intent of the Executive Order to cover these programs. The Indian and Territories programs so excluded will be published in a separate **Federal Register** notice at a later date.

A number of commenters agreed with the Department's proposal for coverage of programs; that is, those programs with existing consultation requirements which meet the intent and spirit of the Executive Order should continue to be operated using the existing consultation processes. One of these commenters questioned the effectiveness of consultation in a few programs on some occasions. The Department is desirous of continued good relations with State and local governments, and wishes to have the existing consultation requirements continue to be effective; therefore, the Department intends to work with this commenter and any other State or local government which believes that consultation processes already in place are not being followed in a satisfactory manner.

A smaller number of commenters indicated disagreement with the concept of using existing consultation procedures as proposed by the Department. Of these, one organization commented twice stating that under Interior's concept, the State would lose the opportunity for accommodation or explanation of nonaccommodation and that the Department would lose the advantage of having single focus comments from the State. In addition, the commenter returned to us a list of programs with existing consultation processes which it would choose to include within the E.O. 12372 process. We are somewhat confused by the statement of the commenter and the list returned to us since many of the programs they choose to cover not only can be said to have accommodation, but may not be implemented without the Governor's or some other State agency's approval. In addition, some of the programs are limited in geographic scope such that they are not available to the commenter. A second commenter whose comment was dated prior to publication of our list indicated disagreement with the Department's proposal. As an example of the insufficiency of existing consultation, he cited a Department regulation which he contends is in violation of Federal statutes. We do not understand why the commenter did not bring this alleged violation to the Department's attention earlier. It does not require a formal consultation process to alert a Federal agency to a potential violation of law. Since the program cited by the commenter is one which is available for the States to include within the Executive Order 12372 process, and since the commenter provided no other examples, it may be that this commenter's concerns have been covered. It is the Department's intention to continue existing consultation processes insofar as they meet with the spirit and intent of the Executive Order. It is not the Department's intent to thwart the clear benefit of federalism as expressed in the Executive Order. As stated in the preamble to our proposed rule, the Department believes that the existing processes meet that intent while providing State and local governments with meaningful opportunities to comment and to share in the planning and implementation of the Department's programs and activities. By asking for comments on this concept and soliciting comments on the individual programs once the list was published, the Department wished to find out if its perceptions were correct or, alternatively, if there were widespread problems with the existing consultation processes. From the comments received the Department believes there may be some individual instances where Departmental bureaus have not followed existing processes or where a State or local government perceives a lack of preferred involvement in the Department's programs and activities. The comments do not, however, indicate a wide-spread dissatisfaction with those processes, whether they be processes required by statute or regulation, or informal processes. While we are retaining our scope regulation as originally published and the list of programs as published, the Department invites individual states to discuss the implementation of consultation in individual programs.

Four commenters provided us with a list of programs that they indicated should be covered by the process under the Executive Order. All of the programs mentioned by two commenters are covered. One commenter listed four Indian programs which have been discussed above, one program with an existing consultation process (which is inapplicable geographically) and seven programs which may be included within a State process under the Executive Order. The fourth commenter, as discussed earlier, listed programs not applicable in its area; therefore, we intend to work with the commenter as it develops its internal process.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to Section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 43 CFR Part 9

Intergovernmental relations.

For the reasons set out in the Preamble, the Department of Interior amends Title 43, Code of Federal Regulations, by adding a new Part 9, to read as follows:

Dated: June 9, 1983.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

PART 9—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE INTERIOR PROGRAMS AND ACTIVITIES

Sec.

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506).

§ 9.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 9.2 What definitions apply to these regulations?

"Department" means the U.S. Department of the Interior.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of the Interior or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 9.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the **Federal Register** a list of the Department's programs and activities that are subject to these regulations and a list of programs and activities that have existing consultation processes.

(b) With respect to programs and activities that a state chooses to cover, and that have existing consultation processes, the state must agree to adopt those existing processes.

§ 9.4 [Reserved]

§ 9.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 9.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 9.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 9.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 9.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as in reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

§ 9.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

§ 9.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 9.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 9.6.

(b) (1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by a single point of contact, the Secretary follows the procedures of § 9.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 9.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of the section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 9.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activitiy;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 9.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 9.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 9.12 How may a state simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 9.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

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DEPARTMENT OF THE INTERIOR

Relationship of Interior Programs to E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice contains a list of programs and activities eligible for E.O. 12372, "Intergovernmental Review of Federal Programs" process use and a list of programs and activities with existing consultation processes. This list is being published as a notice, pursuant to the requirements of 43 CFR 9.3, to allow future changes to be made more conveniently.

EFFECTIVE DATE: This notice shall become effective on September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Office of Acquisition and Property Management, Division of Acquisition and Grants, 18th and C Streets, NW., Washington, D.C. 20240, (202) 343-6431.

SUPPLEMENTARY INFORMATION: The Department published a proposed list of programs and activities eligible for the E.O. 12372 process and a list of programs and activities with existing consultation processes by notice of proposed rulemaking in the **Federal Register** on March 24, 1983 (48 FR 12409). In response to comments received by the Department to this notice, no changes have been made to the list of programs eligible for the E.O. 12372 process. However, the list of programs and activities with existing consultation processes has been corrected to more accurately reflect activities administered by the Office of Water Policy and the Bureau of Reclamation. The program, Water Resources Scientific Information Center—42 U.S.C. 7851 is being removed from the list since assistance provided is limited to the provision of technical information, ordinarily by purchase from the National Technical Information Service. The program has been merged with the Water Resources Investigations Program of the U.S. Geological Survey. A list of the Indian and Territories programs which are not covered by the Executive Order will be published in a separate **Federal Register** notice at a later date.

PROGRAMS UNDER WHICH STATES MAY OPT TO USE E.O. 12372 PROCESS

Catalog No.	Program name	Administering bureau
15.904	Historic Preservation—Grants-in-Aid—16 U.S.C. 470.	National Park Service.

PROGRAMS UNDER WHICH STATES MAY OPT TO USE E.O. 12372 PROCESS—Continued

Catalog No.	Program name	Administering bureau
15.916	Outdoor Recreation—Acquisition, Development and Planning (Land and Water Conservation Fund Grants) 16 U.S.C. 4601-4-11.	National Park Service.
15.919	Urban Park and Recreation Recovery Program—16 U.S.C. 2501-2514.	National Park Service.
15.250	Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining—Pub. L. 95-87.	Office of Surface Mining Reclamation and Enforcement.
15.252	Abandoned Mine Land Reclamation Program—Pub. L. 95-87.	Office of Surface Mining Reclamation and Enforcement.
15.600	Anadromous Fish Conservation 16 U.S.C. 757a-757g.	U.S. Fish and Wildlife Service.
15.605	Fish Restoration—16 U.S.C. 777-777k.	U.S. Fish and Wildlife Service.
15.611	Wildlife Restoration—16 U.S.C.669-669i.	U.S. Fish and Wildlife Service.
15.612	Endangered Species Conservation—16 U.S.C. 1531 *et seq.*.	U.S. Fish and Wildlife Service.
15.613	Marine Mammal Grants—16 U.S.C. 1361 *et seq.*.	U.S. Fish and Wildlife Service.
	Fish and Wildlife Conservation Act 16 U.S.C. 2901 *et seq.*.	U.S. Fish and Wildlife Service.
	Atmospheric Water Resources Management Program Research.	Bureau of Reclamation.
15.501	Irrigation Distribution System Loans—43 U.S.C. 421b, c.	Bureau of Reclamation.
15.502	Irrigation Systems Rehabilitation and Betterment 43 U.S.C. 504.	Bureau of Reclamation.
15.503	Small Reclamation Projects 43 U.S.C. 422a-k.	Bureau of Reclamation.

INTERIOR PROGRAMS WITH EXISTING CONSULTATION PROCESSES

Program	Authority
Bureau: National Park Service	
1. Wilderness System	16 U.S.C. 1132.
2. Local Zoning By-Laws	16 U.S.C. 459b-4. 16 U.S.C. 460s-11.
3. Land Resources Division Acquisition of Lands for Airports.	16 U.S.C. 7b.
4. Alaska Land Use Council	16 U.S.C. 3181.
5. Air Quality Plans	42 U.S.C. 7421 40 CFR 51.240-51.252.
6. Historic Preservation Certification Process	16 U.S.C. 470a1(a) 36 CFR Part 67.
7. Disposal of Surplus Wildlife	40 U.S.C. 471. 36 CFR Part 10.
8. Disposal of Federal Surplus Property	40 U.S.C. 484(k)(2)(C).
9. National Wild & Scenic and Recreational Rivers System.	16 U.S.C. 1271.
10. Comprehensive Conservation Plan.	16 U.S.C. 1301.
11. National Trails System	16 U.S.C. 1241.
12. Construction Projects	*no cite.*
13. Cooperative Management Program.	16 U.S.C. 670c.

INTERIOR PROGRAMS WITH EXISTING CONSULTATION PROCESSES—Continued

Program	Authority
Bureau: Fish and Wildlife Service	
1. Conveyance of Bird Refuge Lands	16 U.S.C. 715F.
2. Preservation, Use, Management of Fish & Wildlife Resources.	43 CFR 24.3.
3. Taking & Using Eagles for Scientific, Exhibition and Religious Purposes.	16 U.S.C. 668a.
4. Subsistence Resources (Alaska Only).	16 U.S.C. 3115.
5. Hunting and Fishing—Natl. Wildlife Refuges and Seashores.	16 U.S.C. 459, *et seq.*
6. Migratory Bird Conservation Fund.	16 U.S.C. 715k-5.
7. Conservation Law Enforcement.	16 U.S.C. 661-666c.
8. Farm Fish Pond Management.	16 U.S.C. 661 *et seq.*, 742a-742j.
9. Environmental Contaminant Evaluation.	16 U.S.C. 661 *et seq.*, 742a *et seq.*
10. Sport Fish Technical Assistance.	16 U.S.C. 661 *et seq.*, *742a-747j.*
11. Wildlife Technical Assistance.	16 U.S.C. 661 *et seq.*
12. Federal Wildlife and Plant Permits.	16 U.S.C. 1531 *et seq.*, 703 *et seq.*, 668 *et seq.*, 371 *et seq.* 50 CFR Parts 10, 13-18 and 21-23.
13. Fish and Wildlife Resources.	16 U.S.C. 661 *et seq.*, 668 dd. 50 CFR Parts 25-36, 70.
14. Established Research	16 U.S.C. 661-661c, 742a-742j, 757a-757f, 778-778c, 931-939c.
15. Research at Cooperative Units.	16 U.S.C. 753a-b.
16. Research and Development Program requiring State Permits.	16 U.S.C. 778-778c, 742a-742e, 661-666c, 931-939c, 757a-757f.
Bureau: Bureau of Mines	
1. State Mining and Mineral Resources and Research Institutes.	Pub. L. 95-87.
Bureau: Bureau of Reclamation	
1. Research and Development Planning Report.	43 U.S.C. 1593.
2. Modification of Contracts Water Projects.	43 U.S.C. 1598.
3. Planning Programs—Water and Related Land.	33 U.S.C. 701-1.
4. Water Resources Research & Development.	42 U.S.C. 7815-16.
Bureau: Office of Water Policy	
1. State Water Research Institutes.	42 U.S.C. 7811-14.
Bureau: Minerals Management Service	
1. Outer Continental Shelf Oil and Gas Leasing.	30 CFR Part 250 43 CFR Part 3300
Bureau: United States Geological Survey	
1. Geologic and Mineral Resource Surveys and Mapping.	43 U.S.C. 31, 48, 49.
2. National Mapping, Geography and Surveys.	43 U.S.C. 31, 48, 49 & 50.
3. Water Resources Investigations.	43 U.S.C. 31, 48, 49 and 50.
Bureau: Bureau of Land Management	
1. Sale of Forest Products	43 CFR Part 5400.
2. Alaska Resource Management Decisions.	Pub. L. 96-487.
3. Land Withdrawals	Pub. L. 94-579.
4. Land Exchanges	Pub. L. 94-579. 43 CFR Part 2200. 43 CFR Part 2300.

INTERIOR PROGRAMS WITH EXISTING CONSULTATION PROCESSES—Continued

Program	Authority
5. Petition—Application Decisions.	Pub. L. 94-579.
	43 CFR Part 2200.
6. Sales of Public Lands	Pub. L. 94-579.
	43 CFR Part 2710.
7. Conveyance of Omitted/Unsurveyed Lands.	Pub. L. 94-579.
	43 CFR Part 2547.
	43 CFR Part 2742.
8. Rights-of-Way and Temporary Use permits.	43 CFR Part 2800.
9. Oil and Gas Pipeline Rights-of-Way.	43 CFR Part 2800.
10. Resource Management Plans.	Pub. L. 94-579.
	43 CFR Part 1601.
11. Wilderness Studies	Pub. L. 88-577, FR 2-3-82, p. 5119.
12. Forest Fire Protection (Oregon).	50 Stat. 675.
13. Wild Horse & Burro Management.	Pub. L. 92-195.
	43 CFR Part 4720.

INTERIOR PROGRAMS WITH EXISTING CONSULTATION PROCESSES—Continued

Program	Authority
14. Conservation of Wildlife in Grazing District.	62 Stat. 533.
15. Establishment of Forest Master Units-O and C Lands (Oregon).	43 CFR part 5042.
16. Public Easements (Alaska).	Pub. L. 96-487.
	43 CFR Part 2650.
17. Federal Coal Leasing and Management.	43 CFR Part 3420.
18. Onshore Oil & Gas Lease Facilities.	30 CFR Part 250.
19. Grazing Privileges	43 U.S.C 315a.
20. Mineral Leasing	30 U.S.C. 81.
	43 CFR Part 4000, 351 *et seq.*
	43 CFR Part 1840, 3000, 3500 and 23.
21. Non-Sale Disposals of Mineral Material.	30 U.S.C. 601-604, 611.
	43 CFR Part 21.
	43 CFR Part 4.
22. Sale of Mineral Material	30 U.S.C. 601-4, 611.

INTERIOR PROGRAMS WITH EXISTING CONSULTATION PROCESSES—Continued

Program	Authority
	43 CFR Parts 23, 1840 and 3600.
23. Wildlife Habitat Management (Sikes Act).	16 U.S.C. 79 *et seq.*
	43 U.S.C. 1737 and 1738.
24. Law Enforcement	Pub. L. 94-579.
25. Alaska State and Native Land Conveyances.	Alaska Statehood Act.
	Alaska Native Claims Settlement Act.
26. Timber Sales	30 U.S.C. 601-604.
	43 U.S.C. 118.
27. Wilderness	16 U.S.C. 1132(d)(1)(c).
28. Grazing Leases and Permits.	43 U.S.C. 315, 1181.
29. Onshore Oil and Gas Leasing.	

Dated: June 17, 1983.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

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federal register

Friday
June 24, 1983

Part XI

Department of Justice

Office of the Attorney General

Intergovernmental Review of the Department of Justice Programs and Activities; Final Rule and Department of Justice Programs and Activities Covered by Executive Order 12372; Notice

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 30

[Order No. 1018-83]

Intergovernmental Review of the Department of Justice Programs and Activities

AGENCY: Office of the Attorney General, Justice Department.

ACTION: Final Rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Justice. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Paul P. Colborn, Office of Legal Policy, Room 4235, Department of Justice, Washington, D.C. 20530 (202/633-4016).

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3161), the Department of Justice, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received two comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983 (48 FR 15587, April 11, 1983), extending the effective date of these final regulations until September 30, 1983. The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. the Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" reponse to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the state has these options: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can trigger the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained below.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration the views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an "accommodate or explain" response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus view, or views may differ. A state process recommendation which is a consensus view,—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be a party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule	Final rule
Section:	Section:
30.1	30.1.
30.2	30.2.
30.3(a)	30.3.
30.3(b)	30.7(a).
30.4	30.4.
30.5(a)	30.6(b).
30.5(b)	30.6(d).
30.5(c)	30.6(c).
30.6(a)	30.8(b).
30.6(b)	30.7(a).
30.6(c)	30.8(a).
30.6(d)	Deleted.
30.6(e)	30.9.
30.7(a)	30.10(a).
30.7(b)	30.10(b), (c).
30.8	30.11.
30.9	30.12.
30.10	30.13.

Portions of the final rule not listed in this table (§§ 30.5, 30.6(a), 30.7(b), and 30.8(c)) are new.

Section 30.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. The text of sections 401 and 204 is printed in the Department of Agriculture's final rule published elsewhere in this issue (see supplementary information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. In keeping with section 204, subsection (b) adds mention of "areawide" entities. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under

these regulations, will recognize its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 30.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutey necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 30.10. In this section, the Attorney General accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an acommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 30.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the State process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many national security actions, even those affecting state and local jurisdictions, involve classified information. It is meaningless to expect state and local review of national security matters, for example, when access to the plans or documents for the proposed federal action is not possible for national security reasons. It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed for on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. The only included program to which section 204 of the Demonstration Cities and Metropolitan Development Act applies is indicated with an asterisk (*). Section 204 obligations apply with respect to this program only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice, rather

than as part of this rule, to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 30.4 What are the Attorney General's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM, except for the addition of paragraph (c) referring to the general requirements of section 401 of the Intergovernmental Cooperation Act, which these regulations now expressly implement (see discussion of § 30.1 above).

Section 30.5 What is the Attorney General's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Attorney General, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 30.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 30.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 30.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Attorney General with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Attorney General of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 30.7, discussed below.

Section 30.7 How does the Attorney General communicate with state and local officials concerning the Department's programs and activities?

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional, or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Department should be contacted for more information.

Section 30.8 How does the Attorney General provide an opportunity to comment on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—address § 30.6(c) of the NPRM (redesignated § 30.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Attorney General would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 days and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Attorney General will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional, and local entities regarding the proposed federal action. Because paragraphs, (a) and (b) now provide that the Attorney General will establish this starting date, the language of the NPRM permitting the Attorney General to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Attorney General will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 30.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 30.6 of the NPRM has been dropped. A new § 30.9 of the final rule describes how the Attorney General receives and responds to comments.

Section 30.9 How does the Attorney General receive and respond to comments?

This new section replaces § 30.6(e) of the NPRM and elaborates in substantially greater detail the Attorney General's obligations concerning the receipt of and response to comments. Paragraph 30.6(e) had provided that the Attorney General would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the federal-state/local and state/local-federal communication and information flow in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this federal/state/local communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Attorney General to follow the "accommodate or explain" procedures of § 30.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Attorney General will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the

Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 30.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement in order for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule, but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional, and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 30.10 How does the Attorney General make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicates what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 30.11 What are the Attorney General's obligations in interstate situations?

This section is based on § 30.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If the Council of Governments is delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 30.12 How may a state simplify, consolidate or substitute federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Department and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by intergency contact in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations on state plans among and within agencies.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for appears elsewhere in today's **Federal Register** and will be updated periodically.

Section 30.13 May the Attorney General waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional, and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Attorney General, who in turn is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements would be handled administratively under these regulations. Under the A–95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

Section 1 of the Executive Order provides that the Order applies only to federal financial assistance and direct development directly affecting state and local governments. In its NPRM, the department proposes for exclusion only Department programs that do not involve financial assistance or direct development, or that do not directly affect state or local governments. The Department received only two comments addressed to the programs it proposed to exclude from the coverage of the Order.

Objection was made to the proposed exclusion of the training programs of the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation, and the National Institute of Corrections (NIC); the task forces established through U.S. Attorney offices or the DEA; and the Law Enforcement Coordinating Committees established by each U.S. Attorney. The Department proposed to exclude these programs on the grounds that they do not involve financial assistance or direct development. We continue to believe those grounds to be correct, and

accordingly will exclude these programs from coverage under the Order.

Objection was also made to the proposed exclusion of the research programs of the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, the National Institute of Justice, and the NIC. The Department proposed to exclude these basic research programs on the grounds that they concern national issues and therefore do not directly affect state or local governments. We continue to believe those grounds to be correct, and accordingly will exclude these programs from coverage under the Order.

Finally, objection was made to the proposed exclusion of the Public Safety Officers' Benefits Program administered by the Office of Justice Assistance, Research and Statistics. The Department proposed to exclude this program on the grounds that the direct payments to individuals under this program do not directly affect state or local governments. We continue to believe those grounds to be correct, and accordingly will exclude this program from coverage under the Order.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 28 CFR Part 30

Intergovernmental relations.

For the reasons set out in the Preamble, the Department of Justice amends Title 28, Code of Federal Regulations, by revising Part 30 to read as follows:

PART 30—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF JUSTICE PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

§ 30.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 30.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Justice.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Attorney General" means the Attorney General or an official or employee of the Department acting for the Attorney General under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 30.3 What programs and activities of the Department are subject to these regulations?

The Attorney General publishes in the **Federal Register** a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 30.4 What are the Attorney General's general responsibilities under the Order?

(a) The Attorney General provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Attorney General, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planing cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Support state and local governments by discouraging the reauthorization or creations of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

(c) In considering comments received under these regulations, the Attorney General considers the objectives set forth in 31 U.S.C. 6506(b).

§ 30.5 What is the Attorney General's obligation with respect to federal interagency coordination?

The Attorney General, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 30.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 30.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Attorney General of the Department's programs and activities selected for that process.

(c) A state may notify the Attorney General of changes in its selections at any time. For each change, the state shall submit to the Attorney General an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Attorney General of changes in their program selections.

(d) The Attorney General uses a State's process as soon as feasible, depending on individual programs and activities, after the Attorney General is notified of its selections.

§ 30.7 How does the Attorney General communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 30.6, the Attorney General, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Attorney General provides notice to directly affected state, areawide, regional, and local entities in a state or proposed federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other means which the Department in its discretion deems appropriate.

§ 30.8 How does the Attorney General provide an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Attorney General gives state processes or directly affected state, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Attorney General to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Attorney General to comment on proposed direct federal development or federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comments.

§ 30.9 How does the Attorney General receive and respond to comments?

(a) The Attorney General follows the procedures in § 30.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 30.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Attorney General follows the procedures of § 30.10 of this part.

(e) The Attorney General considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Attorney General is not required to apply the procedures of § 30.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 30.10 How does the Attorney General make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Attorney General either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision, in such form as the Attorney General in his or her discretion deems appropriate. The Attorney General may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Attorney General informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days afters the single point of contact receives the explanation; or

(2) The Attorney General has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 30.11 What are the Attorney General's obligations in interstate situations?

(a) The Attorney General is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding pursuant to § 30.10 if the Attorney General receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Attorney General uses the procedures in § 30.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 30.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Attorney General.

(c) The Attorney General reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 30.13 May the Attorney General waive any provision of these regulations?

In an emergency, the Attorney General may waive any provision of these regulations.

Dated: June 16, 1983.

Edward C. Schmults,

Acting Attorney General.

[FR Doc. 83-16624 Filed 6-23-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1017-83]

Department of Justice Programs and Activities Covered by Executive Order 12372

AGENCY: Office of the Attorney General, Justice Department.

ACTION: Notice of Department of Justice Programs and Activities Covered by the Regulations Implementing Executive Order 12372.

SUMMARY: The Department of Justice is today publishing elsewhere in the **Federal Register** final regulations (28 CFR Part 30) implementing Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Justice. Executive Order 12372 and the regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. They are effective September 30, 1983.

As set forth in the Department regulations, and explained in detail in the preamble to those regulations, the Department is obligated to publish a list of those programs and activitites for which each state may choose to avail itself of the consultation procedures set forth in the regulations. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state review process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

Therefore, to provide information on the Department programs and activities eligible for selection for state processes, the Department is publishing the following list of these "included" programs and activities. The one included program to which section 204 of the Demonstration Cities and Metropolitan Development Act applies is indicated with an asterisk (*). Section 204 obligations apply with respect to this program only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice, rather than as part of the regulations, to allow future changes to be made more conveniently.

Program/Activity (Parenthetical Numbers Are Catalog of Federal Domestic Assistance References)

Bureau of Prisons—Construction projects such as correctional institutions and detention centers (no CFDA number)

Immigration and Naturalization Service—Construction projects such as border patrol stations (no CFDA number)

U.S. Marshals Service—Cooperative Agreement Program (no CFDA number)*

Office of Juvenile Justice and Delinquency Prevention—Formula Grant Program (16.540)

Office of Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants, except grants to non-governmental entities (16.541)

Bureau of Justice Statistics—Criminal Justice Statistics Development Grants (16.550)

Office of Justice Assistance, Research, and Statistics—Categorical Grants for Crime Prevention and Criminal Justice Improvement (no CFDA number)

National Institute of Corrections—Technical Assistance Grants, except contracts to individuals for specialized assistance (16.603)

FOR FURTHER INFORMATION CONTACT: Paul P. Colborn, Office of Legal Policy, Room 4235, Department of Justice, Washington, D.C. 20530 (202) 633-4016.

Dated: June 16, 1983.

Edward C. Schmults,

Acting Attorney General.

[FR Doc. 83-16625 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XII

Department of Labor

Office of the Secretary

Intergovernmental Review of the Department of Labor Programs and Activities; Final Rule and Programs Covered by E.O. 12372; Notice

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 17

30 CFR Part 46

Intergovernmental Review of the Department of Labor Programs and Activities

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs and activities of the Department of Labor. Executive Order 12372 and these proposed regulations, are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

DATES: Effective date September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Annabelle Lockhart, telephone number (202) 523-8176.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3172) the Department of Labor, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 8 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to cummunicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM has contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consulation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropoliotan Development Act of 1966. The intergovernmental consultation provisions of Cicular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

—A means of consulting with local officials; and,

A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for

selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccomodation. No other responsibilities are prescribed by the Federal Geovernment for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directely to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus,—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
17.1	17.1.
17.2	17.2.
17.3(a)	17.3.
17.3(b)	17.7(a).
17.4	17.4.
17.5(a)	17.6(b).
17.5(b)	17.6(d).
17.5(c)	17.6(c).
17.6(a)	17.6(b).
17.6(b)	17.7(a).
17.6(c)	17.8(a).
17.6(d)	Deleted.
17.6(e)	17.9.
17.7(a)	17.10(a).
17.7(b)	17.10(b), (c).
17.8	17.11.
17.9	17.12.
17.10	17.13.

Portions of the final rule not listed in this table (17.5, 17.6(a), 17.7(b), and 17.8(c)) are new.

Section 17.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. This statute provides as follows:

The text of Section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (See Supplementary Information Section of USDA's documents)

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Department's responsibilities under the statutory provisions of Section 401 of the Intergovernmental Cooperation Act.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activites and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulation is to foster improved cooperation between

the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 17.2 What definitions apply to these regulation?

Commenters did not object to the definintions in the proposed rule. However, a few commenters asked that various additional terms to defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," or "federal financial assistance." Experience in other regulatory areas (e. g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of state plans and program inclusions accompanying this rulemaking provided adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of over inclusiveness and under inclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 17.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 17.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provided non-federal funds for, or are directly effected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation or the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the Federal Government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently.

The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 17.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 17.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many problems and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 17.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 17.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by the regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (b) and (c), respectively, of § 17.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 17.7, discussed below.

Section 17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates material from §§ 17.3(b) and 17.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of § 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Department should be contacted for more information.

Section 17.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance?

More commenters—over a third of the total—addressed § 17.6(c) of the NPRM (redesignated § 17.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected State, areawide, regional and local entities regarding proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application.

Paragraph (b) of this section is derived from § 17.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require provisions in the rule for applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 17.6 of the NPRM has been dropped. A new § 17.9 of the final rule describes how the Secretary receives and responds to comments.

Section 17.9 How does the Secretary receive and respond to comments?

This new section replaces paragraph 17.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 17.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implemention of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 17.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But

Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undersirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 17.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that a single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Departmemt.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from section 401.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a

decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation of clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date of which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official paper in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovermental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 17.11 What are the Secretary's obligations in interstate situations?

This section is based on § 17.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 17.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Department and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination

should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated or substituted for appears elsewhere in today's Federal Register and will be updated periodically.

Section 17.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy, to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is state process at all, the Department will continue to meet all legal requirements in these areas.

Scope

The Department received several comments regarding scope. Determinations regarding the inclusion or exclusion of programs were guided by general criteria used by the Federal agencies in identifying which programs or activities should be subject to the Order. Those criteria presented three categories of exclusions: generic, class or individual with subcategories of the types of programs or activities covered within each of those categories.

Generic exclusions were considered to be those programs or activities excluded as a matter of previously announced administration policy. Among those programs and activities are: proposed federal legislation, regulations and budget formulation; direct payments to individuals; classified programs or activities where formal consultation would endanger national security; financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects; and programs and activities directly administered by a federally recognized tribal government.

Class exclusions were considered as "those additional activities or programs determined not to be within the definition of financial assistance, direct federal development of federal licensing or permitting under the Executive Order." Excluded under this category, for example, would be certain financial transactions such as: standard procurement contracts; letter contracts; basic ordering agreements; purchase orders; joint ventures; job orders; acceptance of offers; operating funds for government-owned/contractor-operated facilities; and subawards under contracts, grants or cooperative agreements, among others. Also excluded under this category are certain research, development and demonstration programs and activities other than those specified in the description of inclusions below; criminal or civil enforcement matters; direct financial assistance between the federal government and a non-governmental entity; academic training and institutional aid grants.

Finally, the individual exclusion category allowed exclusions to be made against certain qualifying factors and criteria.

Programs and activities involving certain forms of federal assistance or financial transactions with governments such as grants, cooperative agreements; technical assistance; expert information or counseling; and those programs or activities (other than General Revenue Sharing) receiving an exception to the provisions of the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, are among those which are considered as being within the scope of the Executive Order.

Also considered as being within the scope of the Executive Order are those research, development or demonstration

programs or activities which (1) have a unique geographic focus and are directly relevent to the governmental responsibilities of a state or local government within that geographic area; or (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) which are to be newly initiated at a particular site or location and do not necessitate the preparation of an Environmental Impact Statement, but require unusual measures to limit the possiblity of adverse exposure or hazard to the general public.

Determinations regarding the inclusion or exclusion of programs were made only after careful review of all the Department's programs and activities in view of the provisions of the Executive Order and the general criteria discussed above.

The Department proposed to exclude two programs—the Unemployment Insurance Program and the Labor Force Statistics Program.

The Labor Force Statistics Program is being excluded because funding for State agency participation under that program will be on a contractual basis.

Concern was expresed by one commenter regarding the exclusion of the Unemployment Insurance Program. The decision to exclude the Unemployment Insurance Program was based on the generic exclusion criteria. This program involves financial transfers over which this agency has no funding discretion, and for which there are already extensive statutory requirements governing the relationship between the states and the Department.

Several commenters recommended the exclusion of the Employment Service. The Department continues to include the Employment Service under the scope of E.O. 12372. The Job Training Partnership Act amendments to Wagner-Peyser clearly establish local consultation and a "bottoms up" planning system that places the Employment Service within the scope of the Executive Order review process.

One commenter requested the exclusion of the Job Training Partnership Act (JTPA). None of the criteria, for exclusion of programs apply to JTPA. Moreover, E.O. 12372 is clearly consistent with JTPA's emphasis on Federalism, regulatory relief, and minimum direction by the Federal Government. Thus, the regulations are being made applicable to JTPA to the extent consistent with its statutory provisions.

The Department also received a comment which contended that 29 CFR 17.4(b)(7) discourages planning councils and is in conflict with JTPA which sets up Private Industry Councils (PICs). The thrust of § 17.4(b)(7) is that if a State adopts a review process under the Executive Order, the Secretary will, to the extent permitted by law, discourage the reauthorization or creation of planning organizations that are not accountable to state and local elected officials. PICs were specifically provided for in JTPA and clearly operate in partnership and are accountable to elected officials.

Finally, one of the commenters questioned whether or not E.O. 12372 applies to Institutional Grant Programs. Such programs are excludable under the class exclusion criteria—that is—they involve direct financial assistance between the Federal Government and non-governmental entity and are not considered to be within the scope of the Executive Order.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of subjects in 29 CFR Part 17

Intergovernmental relations.

Issued at Washington, D.C., June 16, 1983.

Raymond J. Donovan,

Secretary of Labor.

For the reasons set out in the Preamble, the Department amends Title 29, Code of Federal Regulations, by adding a new Part 17, to read as follows:

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF LABOR PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

§ 17.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 17.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Labor.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Labor or an official or employee of the Department

acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 17.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations.

§ 17.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 17.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 17.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the Federal Register in accordance with § 17.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 17.6, the Secretary, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance if:

(1) The state has not adopted a process under the Order; or

(2) The assistance involves a program or activity not selected for the state process.

This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

§ 17.8 How does the Secretary provide states an opportunity to comment on proposal federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

§ 17.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 17.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 17.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary

follows the procedures of § 17.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 17.10 of this Part, when such comments are provided by a single point of contact, or directly to the Department by a commenting party.

§ 17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 17.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 17.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 17.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 17.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not consistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 17.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regualtions.

Part 46 of Title 30 of the CFR is amended as follows:

PART 46—[AMENDED]

2. In § 46.4, paragraph (a) is revised to read as follows:

§ 46.4 Manner of submission.

(a) An original and two copies of the application for a grant shall be submitted to the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Virginia 22203.

* * * * *

[FR Doc. 83-16047 Filed 6-23-83; 8:45 am]
BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Office of the Secretary

Programs Covered by E.O. 12372

Pursuant to 29 CFR 17.3 published elsewhere in today's issue of the **Federal Register**, the following programs of the Department of Labor are covered by E.O. 12372.

(1) Federal Mine Safety and Health Assistance to States Program, Stat: Section 503 Pub. L. 91–173 as amended.

(2) Work Incentive Program, Stat: Sections 432(d), (e) and (f) of Pub. L. 92–223.

(3) Senior Community Service Employment Program, Stat: Pub. L. 95–478.

(4) Job Corps, Stat: Section 435, of Pub. L. 97–300.

(5) Migrant and Seasonal Farmworkers Program, Stat: Section 402(d) of Pub. L. 97–300.

(6) Job Training Partnership Act, Stat: Pub. L. 97–300.

(7) Employment Service, Stat: Section 501 of Pub. L. 97–300.

(8) Disabled Veteran's Outreach program, Stat: 38 U.S.C. 2003A.

Issued at Washington, D.C., June 16, 1983.

Raymond J. Donovan,
Secretary of Labor.

[FR Doc. 83-16048 Filed 6-23-83; 8:45 am]
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federal register

Friday
June 24, 1983

Part XIII

Department of State

Intergovernmental Review of the Department of State Programs and Activities; Notice

DEPARTMENT OF STATE

[Public Notice 868]

Intergovernmental Review of the Department of State Programs and Activities

AGENCY: Office of the Legal Adviser, State.

ACTION: Notice.

SUMMARY: Executive Order 12372 (47 FR 30959, July 16, 1982), "Intergovernmental Review of Federal Programs," and agency regulations published elsewhere in today's **Federal Register** are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Department is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Department's programs are subject to the Order or that coverage is inappropriate. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Ely Maurer, Assistant Legal Adviser for Educational, Cultural and Public Affairs, Department of State, Washington, D.C. 20520, (202) 632-2682.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3183) the Department of State, along with 25 other federal agencies published Notices of Proposed Rulemaking (NPRM) or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Department received one comment specifically related to the proposed exclusion of all of its programs and activities from coverage under the Order. The Department also was provided copies of selected comments received by OMB or the federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order, and that elected officials of state and local governments are the only proper parties to decide what should be excluded from the state process of intergovernmental review. Other commenters objected to the various criteria used by federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. Further, it is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate.

One comment noted that both State Department programs excluded for "foreign relations requirements" could have implications for state and local governments and should not be totally excluded. However, the Department notes that both programs already have procedures for consultation with affected state and local governments and believes that these procedures should satisfy the needs of state and local governments consistent with our foreign relations requirements.

The Department has concluded that, presently, none of its programs or activities are covered by the Executive Order or that coverage is inappropriate. When new programs or activities are authorized or initiated by the Department, the Department will determine whether these new programs or activities fall within the scope of the Order or whether coverage is appropriate. If the Department intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register**. If the determination is made that a new or additional program should be included, the Department will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have their views considered by the Department under any consultation procedures provided for in existing or future program statutes or regulations.

Issued at Washington D.C. June 17, 1983.

Michael G. Kozak,

Acting Legal Adviser.

[FR Doc. 83-16957 Filed 6-23-83; 8:45 am]

BILLING CODE 4710-08-M

federal register

Friday
June 24, 1983

Part XIV

Department of Transportation

Office of the Secretary

Intergovernmental Review of Department of Transportation Programs and Activities; Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 152

23 CFR Parts 420, 650, and 740

49 CFR Parts 17, 25, 266, and 450

[OST Docket No. 77]

Intergovernmental Review of the Department of Transportation Programs and Activities

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Transportation. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St., S.W., Washington, D.C., 20590, Room 10105. (202) 426-4723.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3186) the Department of Transportation, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 6 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wished to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state or local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry our intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular No. A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to appropriate federal agencies.

The federal agency provides the state process with notice of proposed action for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point to contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate to explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernment Cooperation Act and other relevant statutory provisions.

"Accommodate to Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus,—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
17.1	17.1.
17.2	17.2.
17.3(a)	17.3.
17.3(b)	17.7(a).
17.4	17.4.
17.5(a)	17.6(b).
17.5(b)	17.6(d).
17.5(c)	17.6(c).
17.6(a)	17.8(b).
17.6(b)	17.7(a).
17.6(c)	17.8(a).
17.6(d)	Deleted.
17.6(e)	17.9.
17.7(a)	17.10(a).
17.8(b)	17.10 (b), (c).
17.8	17.11.
17.9	17.12
17.10	17.13.

Portions of the final rule not listed in this table (§§ 17.5, 17.6(a), 17.7(b), and 17.8(c)) are new.

Section 17.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act.

The texts of Sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue (See Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to

accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 17.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and under inclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 17.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 17.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, operation of FAA air traffic control activities). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the Federal Government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection.

This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 17.4 [Reserved]

Section 17.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 17.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 17.3 is eligible for selection for a state process. The paragraph also declares, more explicity than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 17.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 17.7, discussed below.

Section 17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates material from §§ 17.3(b) and 17.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either

through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 17.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 17.6(c) of the NPRM (redesignated § 17.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. When a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional, and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 17.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 17.6 of the NPRM has been dropped. A new § 17.9 of the final rule describes how the Secretary receives and responds to comments.

Section 17.9 How does the Secretary receive and respond to comments?

This new section replaces § 17.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 17.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 17.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 17.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and the federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments,

paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 17.11 What are the Secretary's obligations in interstate situations?

This section is based on § 17.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 17.12 How may a state simplify, consolidate or substitute federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan coninues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan

approval authority. However, the Department and other federal agencies will each designate focal points with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's Federal Register and will be updated periodically.

Section 17.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consultin with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and focefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A–95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Department proposed to exclude relatively few of its programs and activities for exclusion from the scope of the Executive Order. Six commenters responded to the proposed exclusions. Four wanted the National Airport System Plan (NASP) to be included. Two other commenters asked that additional FHWA programs be excluded (e.g., programs to maintain or rehabilitate existing highway facilities, traffic safety and engineering improvements).

The FAA has concluded that its reasons for excluding the NASP remain valid. The NASP is an unconstrained report of needs, and it contains considerably more development than could be financed with Federal aid. Development must be included in the NASP to be eligible for an airport aid grant, but inclusion does not represent federal approval or commit federal funds. The NASP is prepared from the "bottom up." Local governments prepare master plans for specific airports, state governments and regional planning agencies incorporate these into system plans, and the FAA identifies the airports that have national significance. The FAA relies heavily on state and local plans, and makes federal funds available to help fund these plans. Since coordinated planning is already an integral part of the preparation of these plans, it would not be appropriate to apply the procedures of this regulation

to the completed palns. These same considerations apply to the National Plan of Integrated Airport Systems, which takes the place of the NASP under Pub. L. 97-248.

In response to the comments received on its programs, FHWA has decided that it would be appropriate to exclude the following additional activities:

—Traffic engineering improvements
—Safety projects
—3R Projects
—4R projects not involving new construction or major new added features
—All projects involving the new construction of features directed solely at the operation of a highway facility (e.g., rest areas, landscaping, lighting).
—Bridge replacement projects
—Experimental and demonstration projects
—Emergency relief projects

These activities can be characterized as preserving the integrity of the existing transportation system and preseving and ensuring the safety and efficient operation of existing facilities. These exclusions are consistent with practice under the A-95 system. They do not exclude anything that was covered under A-95.

In preparing the list of inclusions for this final rule, some DOT offices discovered programs and activities that inadvertantly were left off the list of proposed exclusions in the NPRM. The Department will publish a notice at a later date requesting public comment on a proposal to exclude these programs. At present, however, Federal financial assistance and direct Federal development programs not excluded should be regarded as included. With the exceptions listed in this section of the preamble, all DOT federal financial assistance and direct federal development programs and activities should be regarded as included.

Executive Order 12291, Paperwork Reduction Act, Regulatory Flexibility Act, and DOT Regulatory Policies and Procedures

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of data. Because of its intermodal, interagency, and intergovernmental effects, this rule is a significant rule under the DOT Regulatory Policies and Procedures. However, because its economic effects are likely to be minimal for any of the parties involved, the Department has determined that the preparation of a regulatory evaluation is not necessary.

List of Subjects in 49 CFR Part 17

Intergovernmental relations.

1. For the reasons set forth in the Preamble, the Department of Transportation amends Title 49, Code of Federal Regulations, by adding a new Part 17, to read as follows:

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF TRANSPORTATION PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 17.1 What is the purpose of these regulations?

(a) The regulation in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 17.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Transportation.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Transportation or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 17.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 17.4 [Reserved]

§ 17.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks

advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 17.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 17.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs, and activities, after the Secretary is notified of its selections.

§ 17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 17.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state proces.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

§ 17.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or state, areawide, regional and local officials and entities at least:

(1) [Reserved]

(2) 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 17.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 17.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 17.6

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local offficials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 17.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 17.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision, in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 17.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 17.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 17.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 17.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 17.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

2. The Department is removing the following regulations:

TITLE 14—[AMENDED]

PART 152—[Amended]

Appendix E—[Removed]

14 CFR Part 152, by removing Appendix E thereto in its entirety.

TITLE 23—[AMENDED]

PART 420—[AMENDED]

Subpart C—[Removed]

23 CFR Part 420, by removing Subpart C thereof in its entirety;

PART 650—[AMENDED]

§ 650.113 [Amended]

23 CFR Part 650, by removing § 650.113(b) thereof;

PART 740—[AMENDED]

§ 740.118 [Amended]

23 CFR Part 740, by removing § 740.118(e)(2) thereof, by removing the words "and the Regional and State clearinghouses" from § 740.118(e)(3) thereof, and, in § 740.118(e) thereof, by redesignating paragraph (e)(3) as paragraph (e)(2).

TITLE 49—[AMENDED]

PART 25—[AMENDED]

§ 25.29 [Amended]

49 CFR Part 25, by removing § 25.29(b) thereof;

PART 266—[AMENDED]

§ 266.15 [Amended]

49 CFR Part 266, by removing from § 266.15(a) thereof the second and third sentences, from the words "In accordance with . . ." through the words "there were no comments."

PART 450—[AMENDED]

§ 450.106 [Amended]

49 CFR Part 450, by substituting a period for the comma following the word "planning" in § 450.106(c) thereof and removing all language in that paragraph following the word "planning."

§ 450.108 [Amended]

49 CFR Part 450, by removing § 450.108(b) thereof, by substituting a period for a comma after the word "services" in § 450.108(d) thereof and removing all language in that paragraph following the word "services," and by redesignating in § 450.108 paragraph (c) as paragraph (b), paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d).

Issued this 17th day of June 1983, at Washington, D.C.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 83-16685 Filed 6-23-83; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

[Notice No. 82-12]

Intergovernmental Review of Department of Transportation Programs and Activities

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Programs and Activities Included Within the Scope of Executive Order 12372.

SUMMARY: The Department of Transportation is publishing in today's **Federal Register** its final regulation to implement Executive Order 12372, "Intergovernmental Review of Federal Programs." This notice lists the Federal financial assistance and direct federal development programs and activities of the Department which the Order and these regulations cover.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St., S.W., Washington D.C., 20590, Room 10105. (202) 426-4723.

SUPPLEMENTARY INFORMATION:

List of Programs Included for Coverage Under 49 CFR Part 17

Programs marked with an asterisk (*) are also covered by Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, in locations to which this statute applies.

Agency	Program	CFDA No.
FHWA	*Highway Construction, Research, and Construction.	20.205.
	Highway Beautification (Control of Junkyards and Outdoor Advertising).	20.214.
UMTA	*Section 3 Discretionary Capital Grants.	20.500.
	*Section 4(i) Innovative Techniques Program.	
	*Section 5 Formula Grant program.	20.507.
	*Section 6 Research, Development and Demonstration Grant Program.	20.504, 20.506, and 20.510.
	*Section 8 Planning and Technical Studies.	20.505.
	*Section 9 Block Grant Program	
	*Section 9A Mass Transit Account Formula Distribution Program.	
	Section 10 Managerial Training Grants.	20.503.
	Section 11 University Research and Training Grants.	
	*Section 16 Grants to Meet Special Needs of Elderly and Handicapped Persons.	
	*Section 18 Formula Grant Program for Non-Urbanized Areas.	20.509.
NHTSA	*Section 402 State and Community Highway Safety Program.	2.600.
FRA	*Northeast Corridor Improvement Program.	
	*Local Rail Service Assistance Program.	
FAA	*Airport Development Aid Program	20.102.
	*Airport Improvement Program	20.106.
MARAD	Development and promotion of Ports and Intermodal Transportation.	20.801.
RSPA	Natural Gas Pipeline Safety Grants.	20.700.
USCG	Boating Safety Program	20.001.
	Cooperative Marine Sciences Program.	20.002.
	State Boating Safety Financial Assistance Program.	

[1]Alteration of Obstructive Bridges.

The Department also carries on direct Federal development activities. While these activities (e.g., construction of facilities) occur in the context of a number of Departmental functions, they do not themselves have program names like those of the financial assistance programs listed above. These direct development activities are included under the coverage of 49 CFR Part 17 where not expressly excluded, and the Department will comply with this regulation in each specific case.

Issued this 17th day of June, 1983, at Washington, D.C.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 83-16686 Filed 6-23-83; 8:45 am]

BILLING CODE 4910-62-M

federal register

Friday
June 24, 1983

Part XV

Department of the Treasury

Office of the Secretary

Intergovernmental Review of the Department of Treasury Programs and Activities; Notice

DEPARTMENT OF THE TREASURY

Intergovernmental Review of the Department of Treasury Programs and Activities

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice.

SUMMARY: Executive Order 12372 (47 FR 30959, July 16, 1982), "Intergovernmental Review of Federal Programs", and agency regulations published elsewhere in today's **Federal Register** are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Treasury Department is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Department's programs are subject to the Order. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Charles M. Mohn, Office of State and Local Finance, Room 3026, Department of Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3197) the Department of the Treasury, along with 25 other federal agencies published notices proposing that their programs not be subject to the Order or Notices of Proposed Rulemaking (NPRM). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Department received 2 comments specifically related to the proposed exclusion of all of its programs and activities from coverage under the Order. The Department also was provided copies of selected comments received by OMB or the federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Department considered these comments, as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order, and that elected officials of State and local governments are the only proper parties to decide what should be excluded from the State process of intergovernmental review. Other commenters objected to the various criteria used by federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development, and the Order mandates consultation only when State and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and actvities not falling into either of the categories are clearly outside the scope of the Order. Further, it is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. There are also actions related to Federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate.

Two comments were received by the Department of the Treasury that were specific to Treasury programs. The commenters questioned the exclusion of Treasury programs from the Executive Order. It was explained that with the exception of Revenue Sharing, these programs were neither "federal financial assistance" nor "direct federal development," as defined by the Intergovernmental Cooperation Act which is the basis for the Executive Order. Also, Treasury's decision is based on OMB guidance that programs that are "brief, episodic, and 'on request' " are excluded.

It was explained that Revenue Sharing is an entitlement program under which allocation are made according to a statutorily imposed formula. Thus, Revenue Sharing is excluded by the terms of the Intergovernmental Cooperation Act and therefore, by the Executive Order.

The Department has concluded that, presently, none of its programs or activities are covered by the Executive Order. When new programs or activities are authorized or initiated by the Department, the Department will determine whether these new programs or activities fall within the scope of the Order. If the Department intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register.** If the determination is made that a new or additional program should be included, the Department will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have their views considered by the Department under any consultation procedures provided for in existing or future program statutes.

Dated: June 16, 1983.

Peter Wallison,

General Counsel.

[FR Doc. 83-16897 Filed 6-23-83; 8:45 am]

BILLING CODE 4810-25-M

federal register

Friday
June 24, 1983

Part XVI

ACTION

Intergovernmental Review of ACTION Programs; Final Rule

ACTION

45 CFR Part 1233

Intergovernmental Review of ACTION Programs

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs of ACTION. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald C. Owens, Office of General Counsel, ACTION, Washington, D.C. 20525, phone (202) 254-7963.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3200), ACTION, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. ACTION, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Comments received by OMB and other federal agencies were incorporated in the Agency's rulemaking docket. ACTION received no substantive comments relating to its proposed regulation.

In preparing the final rule, the Agency considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Agency has made several changes from the proposed rule. The Agency is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Agency's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state

has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Agency altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed Rule	Final Rule
Section:	Section:
1233.1	1233.1.
1233.2	1233.2.
1233.3(a)	1233.3.
(b)	1233.7(a).
1233.4 Reserved	1233.4 Reserved.
1233.5(a)	1233.6(b).
(b)	(d).
(c)	(c).
1233.6(a)	1233.8(b).
(b)	1233.7(a).
(c)	1233.8(a).
(d)	Deleted.
(e)	1233.9.
1233.7(a)	1233.10(a).
(b)	(b), (c).
1233.8	1233.11 Reserved.
1233.9 Reserved	1233.12 Reserved.
1233.10	1233.13.

Portions of the final rule not listed in this table (§§ 1233.5, 1233.6(a), 1233.7(b), and 1233.8(c)) are new.

Section 1233.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements.

The text of section 401 is printed in the Department of Agriculture final rule published elsewhere in this issue (see Supplementary Information section of U.S.D.A.'s document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Agency's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Agency, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between ACTION and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Agency is stating only that these regulations are not

grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 1233.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Agency does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Agency would not use the term in any but its commonly understood sense.

The Agency chose not to include a definition of "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadevertently leaving something in that should be excluded or leaving something out that should be included.

The Agency also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rule, the Agency expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Agency also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in section 1233.10. In this section, the Director accepts the state process recommendation or reaches a mutually agreeable solution. If the Agency does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Agency believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Agency considered whether to include a definition of the term "state process recommendation." The Agency concluded a definition of this term would not materially help clarify those situations in which the Agency has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to it meaning.

Section 1233.3 What programs of the Agency are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapons systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Agency's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation.)

To provide information on the programs eligible for selection for state processes, the Agency is publishing a notice listing these "included" programs. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Agency will seek public comment on proposed future program exclusions, as these occur.

Section 1233.4 [Reserved]

Section 1233.5 What is the Director's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Agency believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Agency is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Director, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and ACTION regarding programs and activities covered under these regulations.

Section 1233.6 What procedures apply to the selection of programs under these regulations?

Paragraph (a) of this section is new. It makes clear that any ACTION program published in the **Federal Register** list prescribed by § 1233.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to

provide such an assurance when the state submits its initial list of selected programs.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Agency believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Agency does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (b) and (c), respectively, of § 1233.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Director with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Agency to establish deadlines for states to inform the Director of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in the coordination procedures. In addition, the Agency has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program is not selected for a state process. This question is answered in paragraph (b) of § 1233.7, discussed below.

Section 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

Paragraph (a) incorporates material from §§ 1233.3(b) and 1233.6(b) of the NPRM, except that the final regulation specifies that the Director's obligation to communicate with state and local elected officials applies to programs subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Director will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Agency must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Agency may also take the initiative at any time to contact any interested person or entity about one of the Agency's programs. Further, the Agency need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Agency notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Agency need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Agency communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program. The Agency will carry out its responsibilities in these situations by providing notice to state, areawide, regional of local officials or entities that would be directly affected by the proposed federal financial assistance. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Agency should be contacted for more information.

Section 1233.8 How does the Director provide states the opportunity of commenting on proposed federal financial assistance?

More commenters—over a third of the total—addressed § 1233.6(c) of the NPRM (redesignated § 1233.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Director would give states at least 30 days to comment on any proposed federal financial assistance. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Agency has decided to lengthen the comment period to 60 days in all cases [except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days].

The Director will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. Where a program is not selected for the state process, the Agency will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Director will establish this starting date, the language of the NPRM permitting the Director to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Director will ensure the commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 1233.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and the communication with the Agency have been delegated. This paragraph is intended to make clear that when this

responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Paragraph (e) of § 1233.6 of the NPRM has been dropped. A new § 1233.9 of the final rule describes how the Director receives and responds to comments.

Section 1233.9 How does the Director receive and respond to comments?

This new section replaces § 1233.6(e) of the NPRM and elaborates in substantially greater detail the Director's obligations concerning the receipt of and response to comments. Section 1233.6(e) had provided that the Director would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Agency's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Agency has made substantial changes in this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Agency whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Agency is concerned only that the single point of contact communicates those comments and recommendations to the Agency.

Paragraph (a) obligates the Director to follow the "accommodate or explain" procedures of § 1233.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Agency.) If these conditions are not met, the Director will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Agency will always fully consider all comments it receives under these regulations.

The Agency's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Agency's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus was to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Agency will respond as provided in § 1233.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Agency under these rules. Moveover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Agency.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Agency before the review and comment period ends. These entities may also choose to send their comments directly to the Agency concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Agency all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Agency considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Agency makes provision for responding to

comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local entities may submit comments either to the applicant or to the Agency, or both. The Agency is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program of the Agency.

Paragraph (e) simply reiterates the Agency's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Agency. This obligation derives directly from section 401.

A number of commenters suggested that ACTION and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Agency recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Agency does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Agency believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Agency will expect the applicant to forward those comments with its application to the Agency. However, this does not obviate the necessity for transmitting the state process recommendation to the Agency through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Agency.

Section 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Agency through a single point contact, the Agency becomes obligated to accommodate or explain. This means that the Agency need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Agency will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Agency may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Agency will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Agency will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Agency believes that to avoid unduly delaying the award of federal financial assistance, a longer period should not be provided. The Agency believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Agency has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Agency has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Agency sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the long-standing successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Agency will be free to begin carrying out its decision on the sixteenth day after the day the Agency sends the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Agency will make an effort to be responsive as practicable consistent with the Agency's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 1233.11 [Reserved.]

Section 1233.12 [Reserved]

Section 1233.13 May the Director waive any provision on these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Agency is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Agency uses the emergency waiver provision, the Agency will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decision-making concerning the matter about which the waiver was used. In addition, the Agency will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to the comments specifically pertaining to various features of these regulations, there are several other comments made to the Agency to which the Agency would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight

role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Agency wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Agency's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review of "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Agency are responsible to the Director who, in turn, is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded ACTION and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Agency will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Agency will work with states to integrate handling some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Agency will continue to meet all legal requirements in these areas.

Scope

The Agency has not excluded any of ACTION's programs under this rule. Historically, the only ACTION programs covered by OMB Circular A-95 were the Older American Volunteer Programs (OAVP) and, generally, only positive comments were received. Some states, in their A-95 process, have elected not to review proposals for renewal of ongong OAVP projects. Numerous state and local government entities are themselves ACTION grantees or providers of non-federal support for local projects. Outside of OAVP, the agency and the states have had no experience with review of other ACTION programs beyond the legislated Governor's review of VISTA proposals. Accordingly, the agency will review the present decision to make no exclusions at a future date as circumstances dictate.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Agency has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Agency and allow state and local governments to establish cost effective consultation procedures. For this reason, the Agency believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Agency certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 1233

Intergovernmental relations.

For the reasons set out in the Preamble, ACTION amends Title 45, Code of Federal Regulations, by adding a new Part 1233, to read as follows:

PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS

Sec.

Authority.—Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6505).

§ 1233.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

§ 1233.2 What definitions apply to these regulations?

"Agency" means ACTION, the National Volunteer Agency.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of ACTION, or an official or employee of the Agency acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1233.3 What programs of the Agency are subject to these regulations?

The Director publishes in the Federal Register a list of the Agency's programs that are subject to these regulations.

§ 1233.4 [Reserved].

§ 1233.5 What is the Director's obligation with respect to federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and ACTION regarding programs covered under these regulations.

§ 1233.6 What procedures apply to the selection of programs under these regulations?

(a) A state may select any ACTION program published in the Federal Register in accordance with § 1233.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Agency's programs selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs, after the Director is notified of its selections.

§ 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

(a) The Director provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Agency. For those programs covered by a state process under § 1233.6, the Director, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(1) The state has not adopted a process under the Order; or

(2) The assistance involves a program not selected for the state process.

This notice may be made by publication in the Federal Register, or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Director to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Director to comment on proposed federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

§ 1233.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 1233.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1233.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both.

(d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the prodecures of § 1233.10 of this Part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 1233.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purpose of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 1233.11 [Reserved]

§ 1233.12 [Reserved]

§ 1233.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

Signed at Washington, D.C. this 8th day of June, 1983.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 83-16385 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XVII

Environmental Protection Agency

Intergovernmental Review of the Environmental Protection Agency Programs and Activities; Final Rule and Programs and Activities Eligible for Intergovernmental Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 29, 35, 40, 51, and 255

[OA-FRL-2380-2(a)]

Intergovernmental Review of the Environmental Protection Agency Programs and Activities

AGENCY: Environmental Protection Agency, Office of the Administrator.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Environmental Protection Agency (EPA). Executive Order 12372 and these regulations replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: John A. Gwynn, Chief, Grants Policy and Procedures Branch (PM-216), Environmental Protection Agency, Washington, D.C. 20460 (202) 382-5268.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3208) the Environmental Protection Agency and 25 other federal agencies published Notices of Proposed Rulemaking (NPRMs) to carry out Executive Order 12372, or notices proposing that their programs not be subject to the Order. Subsequently two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The EPA, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including the comments received by OMB and other federal agencies which we incorporated in our rulemaking docket, the EPA received approximately 160 comments on government-wide issues during the comment period. In addition, the EPA received 42 comments specifically related to the inclusion or exclusion of our programs from the coverage of the Order or other issues pertaining only to our Agency.

In preparing the final rule, the Environmental Protection Agency considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, we made several changes from the proposed rule. The EPA is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983).

The EPA's existing requirements and procedures under OMB Circular A-95 will continue in effect through September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Directs OMB to revoke OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) do not apply. Existing consultation requirements of other statutes or regulations (except Circular A-95) will continue in effect, including those of the Intergovernmental Cooperation Act of 1968, as amended and the Demonstration Cities and Metropolitan Development Act of 1966, as amended. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; or not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the federal government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section by Section Analysis

In making changes from the NPRM to this final rule, the EPA altered various section and paragraph numbers. To make these changes easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
29.1	29.1.
29.2	29.2.
29.3(a)	29.3.
29.3(b)	29.7(a).
29.4	29.4.
29.5(a)	29.6(b).
29.5(b)	29.6(d).
29.5(c)	29.6(c).
29.6(a)	29.8(b).
29.6(b)	29.7(a).
29.6(c)	29.8(a).
29.6(d)	Deleted.
29.6(e)	29.9.
29.7(a)	29.10(a).
29.7(b)	29.10(b).
	29.10(c).
29.8	29.11.
29.9	29.12.
29.10	29.13.

Portions of the final rule not listed in this table (§ 29.5, § 29.6(a), § 29.7(b), and § 29.8(c)) are new.

Section 29.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. These statutes provide as follows:

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Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 USC §3334)

Section 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review --

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may

be, and the extent to which such project contributes to the fulfillment of such planning. The comments and the recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph b(1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

Section 401 of the Intergovernmental Cooperation Act of 1968, as amended, (31 USC 6506)

§6506. Development assistance

(a) The economic and social development of the United States and the

achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local

viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development asistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

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A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Environmental Protection Agency's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The EPA, when considering and making efforts to accommodate comments and recommendations it receives under this rule, recognizes those responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which states that the regulations were not intended to create any right of judicial review. The final rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the EPA and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the EPA is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 29.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. EPA does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, we would not use the term in any but its commonly understood sense.

EPA chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." In these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

We also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the EPA expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

In addition, the agency does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 29.10. The Administrator accepts the state process recommendation or reaches a mutually agreeable solution. If the Agency does not provide an accommodation in one of these two ways, it must provide an explanation. We believe § 29.10 describes sufficiently what is meant by accommodation and that a further definition of the term is not needed.

Finally, EPA deliberated whether to include a definition of the term "state process recommendation." We concluded that a definition of this term would not materially help clarify those situations in which the Agency has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

This section is the same as § 29.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the federal government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide nonfederal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., EPA source surveillance and enforcement actions in the implementation of federally mandated sanctions). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the EPA budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

EPA believes that exclusions proposed in January should continue to be excluded from the listing of programs

and activities which are eligible for selection for a state process. However, in response to comments we reexamined the criteria for exclusion as well as the particular exclusions that were proposed. These criteria and particular exclusions are discussed in more detail in the section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Agency is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk(*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The EPA will seek public comment on proposed future program or activity exclusions as these occur.

Section 29.4 What are the Administrator's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 29.5 What is the Administrator's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked EPA and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. We believe that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the EPA added a new section 29.5, the language of which is derived from section 401 of the Intergovernmental Cooperation Act, to provide that the Administrator, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

Section 29.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** notice prescribed by § 29.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the final rule. OMB previously wrote all Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. EPA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, we do not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 29.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to § 29.6(c) of the final rule specifies that the state must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. This paragraph also allows EPA to establish deadlines for states to inform the Administrator of changes in program selections. The primary reason for this is to avoid delaying the Agency's processing of assistance applications and decision-making on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, we made some editorial changes for clarity.

A number of commenters asked what procedures would apply when a state chooses not to adopt a process under the Order of when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 29.7, discussed below.

Section 29.7 How does the Administrator communicate with state and local officials concerning EPA programs and activities?

The Environmental Protection Agency notifies the state process about a proposed action concerning a program or activity selected for the state process. The notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process, and the single point of contact could be the information channel for this purpose. EPA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how EPA communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. We will carry out our responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct communication (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who to contact for more information.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. EPA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. We may also take the

initiative at any time to contact any interested person or entity about an EPA program or activity. Further, we need not rely on the state process or the single point of contact to bring about this communication or consultation.

Section 29.8 How does the Administrator provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 29.6(c) of the NPRM (redesignated § 29.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Administrator would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. They requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response, EPA has decided to lengthen the comment period to 60 days in all cases (including interstate matters), except for federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

Paragraph (b) of this section is derived from § 29.6(a) of the NPRM. The provisions of § 29.8 apply to cases in which review, coordination, and communication with the Environmental Protection Agency have been delegated. Paragraph (b) is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

The Administrator will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Agency will provide notice, including any adjustment to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed action. Because paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Several commenters indicated that a notice of intent to apply for funds was the key step in timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. EPA is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. We encourage applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 29.6 of the NPRM has been dropped. A new § 29.9 of the final rule describes how the Administrator receives and responds to comments.

Section 29.9 How does the Administrator receive and respond to comments?

This new section replaces § 29.6(e) of the NPRM and elaborates in substantially greater detail the Administrator's obligations concerning the receipt of and response to comments. Section 29.6(e) had provided that the Administrator would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these commenters wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and EPA's decision to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, we have made substantial changes. Nonetheless, the concept of the single point of contact is being retained.

Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official is the state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to EPA whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. We are concerned only that the single point of contact communicate those comments and recommendations to the Environmental Protection Agency.

Paragraph (A) obligates the Administrator to follow the "accommodate or explain" procedures of § 29.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Agency.) If these conditions are not met, the Administrator will consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the federal government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, EPA will always consider all comments it receives under these regulations.

The Agency's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out our "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, we will respond as provided in § 29.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from EPA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the EPA.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to EPA before the review and comment period ends. These entities may also choose to send their comments directly to EPA concurrent with their sending them to the single point of contact.

Paragraph (b)(2) obligates the single point of contact to send EPA all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, EPA considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), we provide for response to comments where there is not state process, or when a program was not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, the state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency. EPA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular EPA program or activity.

Paragraph (e) simply reiterates our obligation to consider all the comments we receive from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to EPA. This obligation derives directly from sections 401 and 204.

The Environmental Protection Agency recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly; we do not believe it is appropriate to impose specific regulatory requirements regarding administrative details. Each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, EPA expects the applicant to forward those comments with its application to the Agency. However, this does not obviate the necessity for transmitting the state process recommendation to the EPA through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by EPA.

Section 29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Agency through a single point of contact, we are obligated to accommodate or explain. This means that EPA need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. We will consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, § 29.10(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that EPA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, EPA will always send a written explanation of the nonaccommodation.

As under the proposed rule, we will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Agency believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The EPA believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

We included a new paragraph (c) in the final rule to clarify when the ten-day waiting period begins to run. If EPA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If EPA sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, EPA will be free to begin carrying out its decision on the sixteenth day after the day we sent the letter.

Some commenters indicated that what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Environmental Protection Agency will make an effort to be as responsive as practicable consistent with our responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 29.11 What are the Administrator's obligations in interstate situations?

While this section is based on § 29.8 of the NPRM, one feature—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days, except for noncompeting continuation awards.

EPA received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them. We do not believe that it is necessary to provide a procedure for resolving interstate conflicts. It is clearly in our interest to have affected states mutually agree on EPA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, we will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Environmental Protection Agency believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, § 29.11(a)(3) now specifically mentions designated areawide entities as being among those which the EPA will make efforts to notify in interstate situations. OMB will periodically provide us with a list of designated interstate areawide entities. Section 29.11(a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by us if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on an EPA proposed action, and that recommendation is transmitted to us through the single point of contact of either Maryland, Virginia, or the District of Columbia, EPA is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, EPA would also accommodate or explain that recommendation as well.

Section 29.12 How may a state simplify, consolidate or substitute federally required state plans?

This section is unchanged from the NPRM; however, we did receive a number of comments on it. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Environmental Protection Agency had little discretion in developing this provision. In addition, EPA is obligated to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be approved.

One commenter recommended that an appeals process be established to deal with situations where federal agencies disapprove modified state plans. The EPA believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, EPA will work with states during the review process to resolve problems that could impede approval.

A few commenters recommended that there be a federal "single point of contact" for state plans or other purposes. We believe this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, EPA and other federal agencies will each designate a focal point with whom states can contact on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, EPA will not develop model formats, since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for appears elsewhere in today's Federal Register and will be updated periodically.

Section 29.13 May the Administrator waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Environmental Protection Agency is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provision of these regulations. If EPA uses the emergency waiver provision, we will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decision making concerning the matter about which the waiver was used. In addition, EPA will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Agency to which we would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Environmental Protection Agency wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from states, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to our obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operation responsibilities, the officials of EPA are responsible to the Administrator who in turn is responsible to the President for carrying out important Adminstration policy.

Finally, a number of commenters reminded EPA and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies with respect to environmental impact statements, historic preservation, civil rights, etc. We will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, EPA will work with states to intergrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Agency will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

A few commenters specifically objected to this Agency's exclusion of certain plan and permit programs from the Order's provisions for interstate situations. We have retained these exclusions in our final rule and want to clarify our reasons for so doing.

All section 110(a) State Implementation Plans (SIP's), and revisions thereto, are state-developed and undergo an extensive intergovernmental review prescribed by sections 110(a), 121, 126, and 174 of the Clean Air Act before they are adopted. EPA's regulation, 40 CFR Part 51 (§ 51.4 and Subpart M) implements those requirements. They exist because most section 110(a) SIP's have an interstate impact.

A SIP or revision issued under section 110(c) of the Clean Air Act is one that EPA must develop and issue *in lieu* of a state's plan or portion thereof, when the state's is found inadequate. A federally promulgated SIP under section 110(c) not only considers the pertinent results of the state's section 110(a) process, but is also subject to the Administrative Procedure Act requirements for public comment and review. To subject such a federal action to an additional, duplicate process would further delay implementing a necessary environmental control plan mandated by Congress.

Our reason for excluding certain federally issued permits that may have an impact on interstate areas are much the same. Each permit program's regulation implements specific requirements for public input before an EPA final decision or action. To require another intergovernmental review and consultation system is unnecessary. Our program specific statutes and implementing regulations provide ample opportunity for notification, consultation, and public comment on permits which may affect an interstate area.

One commenter notified EPA that its state process would require that:

> * * * all state agency applications for any type of Federal assistance, *MUST* be submitted to the State Clearinghouse for a review and comment process * * *. In addition, any Direct Federal Development Project, Environmental Assessment or Impact Statement which affects the State * * *, or has nationwide impact, should also be transmitted to us for review.

The state may include any programs and activities it wishes to review in its own process. The criteria that agencies used allowed certain federal financial assistance programs and direct federal development activities to be excluded. We excluded only those EPA programs and activities which met the general criteria agencies used for class exclusion (training grants, fellowships, technical assistance, advisory services, specialized services, dissemination of technical information, counseling, specific research, development, and

demonstration projects). The separate notice in today's **Federal Register** lists all of the EPA programs and activities included in the scope of the Order.

Conforming Amendments

In the NPRM, we cited other EPA regulations that we expected to amend as part of this final rule. Because the effective date for implementing rules under the Order was extended, we do not need to amend the existing general grant regulation (40 CFR Part 30) and construction grant regulation (40 CFR Part 35—Subparts E and I). EPA is completing new general assistance and construction grant regulations which reflect the new intergovernmental review process. They are expected to be effective by October 1, 1983, as will this final rule.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Environmental Protection Agency has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Agency and allow state and local governments to establish cost effective consultation procedures. For this reason, the EPA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the EPA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in:

40 CFR Part 29

Intergovernmental relations.

40 CFR Part 35

Air pollution control,
Grant programs—environmental protection,
Indians,
Intergovernmental relations,
Pesticides and pests,
Reporting and recordkeeping requirements,
Waste treatment and disposal,
Water pollution control.

40 CFR Part 40

Environmental protection,
Grant programs—environmental protection,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Research.

40 CFR Part 51

Administrative practice and procedure,
Air pollution control,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Ozone,
Sulfur oxides,
Nitrogen dioxide,
Lead,
Particulate matter,
Hydrocarbon,
Carbon monoxide.

40 CFR Part 255

Waste treatment and disposal,
Intergovernmental relations.

Dated: June 17, 1983.

William D. Ruckelshaus,

Administrator.

1. For the reasons set out in the Preamble, the U.S. Environmental Protection Agency amends Title 40, Code of Federal Regulations, by adding a new Part 29, to read as follows:

PART 29—INTERGOVERNMENTAL REVIEW OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 29.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended, on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Environmental Protection Agency (EPA) and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers.

§ 29.2 What definitions apply to these regulations?

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"Agency" means the U.S. Environmental Protection Agency (EPA). "Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"States" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

The Administrator publishes in the **Federal Register** a list of the EPA programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 29.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the EPA.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Administrator to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 29.5 What is the Administrator's obligation with respect to federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

§ 29.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 29.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of EPA programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit an assurance to the Administrator that the state has consulted with local elected officials regarding the change. EPA may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 29.7 How does the Administrator communicate with state and local officials concerning the EPA programs and activities?

(a) For those programs and activities covered by a state process under § 29.6, the Administrator, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle asis reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice of proposed federal financial assistance or direct federal development to directly affected state, areawide, regional, and local entities in a state if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be published in the **Federal Register** or issued by other means which EPA, in its discretion deems appropriate.

§ 29.8 How does the Administrator provide States an opportunity to comment on proposed federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Administrator to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Administrator to comment on proposed direct federal development or federal financial assistance, other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Environmental Protection Agency have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 29.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 29.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 29.6.

(b) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation. However, if a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, the state, areawide, regional and local officials and entities may submit comments directly either to the applicant or to EPA.

(d) If a program or activity is not selected for a state process, the state, areawide, regional and local officials and entities may submit comments either directly to the applicant or to EPA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to EPA by the single point of contact, the Administrator follows the procedures of § 29.10 of this Part.

(e) The Administrator *considers* comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not

required to apply the procedures of § 29.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through the state's single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Administrator, in his or her discretion, deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) EPA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 29.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and selected an EPA program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that do not adopt a process under the Order or do not select an EPA program or activity;

(4) Responding in accordance with § 29.10 of this part to a recommendation received from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with EPA were delegated.

(b) The Administrator uses the procedures in § 29.10 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 29.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Administrator.

(c) The Administrator reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 29.13 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

2. For the reasons set forth in the preamble, 40 CFR Parts 35, 40, 51, and 255 are amended as follows:

PART 35—[AMENDED]

Section 35.1620–6 is revised in its entirety to read as follows:

§ 35.1620–6 Intergovernmental review.

EPA will not award funds under this subpart without review and consultation in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

PART 40—[AMENDED]

Section 40.135–1 is amended by removing § 40.135–1(b) and redesignating § 40.135–1(c) as § 40.135–1(b); by amending § 40.135–2 to add a new paragraph (e) to read as follows:

§ 40.135–2 Application requirements.

* * * * *

(e) *Intergovernmental review.* EPA will not award funds under this subpart without review and consultation, if applicable, in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

PART 51—[AMENDED]

§ 51.241 [Amended]

Section 51.241(c) is amended by removing the last sentence, "Attention is directed to Part IV of the Office of Management and Budget Circular A–95 (41 FR 2050) which encourages the designation of established, substate comprehensive planning agencies as the agencies to carry out Federally assisted or required areawide planning."

§ 51.248 [Amended]

Section 51.248(b) is amended by removing the last sentence, "The provisions of items 3a through d, Part IV of the Office of Management and Budget Circular A–95 shall be considered in the preparation of memoranda of understanding."

Section 51.251 is revised in its entirety to read as follows:

§ 51.251 Conformity with Executive Order 12372.

The organization responsible for developing the state implementation plan revision shall submit a draft of any major implementation plan revision including any of the six elements listed in § 51.244 to the state process, if one has been designated by the state under Executive Order 12372, "Intergovernmental Review of Federal Programs" (47 FR 30959, July 16, 1982) as amended April 8, 1983 (48 FR 15587, April 11, 1983) for review and comment for a period of 60 days. The draft plan or portions thereof, shall be submitted to the state process either prior to or concurrent with announcement of public hearings on the plan. Comments received from the state process within that 60-day period shall be considered. The organization initiating the plan revision shall retain copies of these comments for inspection by the Administrator and the public.

§ 51.252 [Amended]

Section 51.252(b) is amended by removing the words "in the A–95 clearing house" and adding, in their place, "from the state process designated under Executive Order 12372".

PART 255—[AMENDED]

§ 255.2 [Amended]

Section 255.2 is amended by removing the words "OMB Circular A–95 Part IV

of Attachment A" and adding in their place, "40 CFR Part 29 of this chapter".

§ 255.20 [Amended]

Section 255.20 is amended by removing the words "the chief executives of all agencies designated pursuant to OMB Circular No. A–95, and with" and adding in their place, "regional and areawide planning agencies,".

§ 255.23 [Amended]

Section 255.23(a) is amended to remove the words, "A–95 clearinghouses" and adding, in their place, "agencies and the state process under Executive Order 12372".

[FR Doc. 83–17025 Filed 6–23–83; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-2380-2(b)]

Programs and Activities Eligible for Intergovernmental Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

The Environmental Protection Agency (EPA) is publishing this list of programs and activities in conjunction with its final rule appearing elsewhere in today's **Federal Register**, 40 CFR Part 29, "Intergovernmental Review of Environmental Protection Agency Programs and Activities." This list identifies EPA's financial assistance programs and direct development activities which states may select for intergovernmental review under a process established in accordance with Executive Order 12372. Programs subject to the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act are designated with an asterisk (*).

The effective date for all regulations implementing the Order is September 30, 1983. Because this is the last day of the Federal Fiscal Year, the Administrator determined that it is neither feasible nor practicable for EPA to apply its new regulation to any of the awards that the Agency makes on that date. Therefore, EPA will implement 40 CFR Part 29 procedures beginning October 1, 1983, for programs and activities that states select from the following list.

Financial Assistance Programs

1. *State and Local Assistance Programs.*

CFDA NO.	Title
*66.001	Air Pollution Control Program.
*66.418	Construction Grants for Wastewater Treatment Works.
*66.419	Water Pollution Control—State and Interstate Program Grants.
*66.454	Water Quality Management Planning.
*66.432	State Public Water System Supervision—Program Grants.
*66.433	State Underground Water Source Protection—Program Grants.
*66.438	Construction Management Assistance.
*66.451	Hazardous Waste Management Financial Assistance to States.
(*)	State Inventories of Uncontrolled Hazardous Waste Sites.
*66.600	Environmental Protection Consolidated Grants—Program Support.
*66.603	Loan Guarantees for Construction of Treatment Works.
*66.700	Pesticides Enforcement Program Grants.
*66.802	Superfund Cooperative Agreements (Remedial Clean Ups).

2. *Research, Development, and Demonstration Projects.* (Selection is limited to proposals which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a state or local government within that geographic area.)

CFDA NO.	Title
66.500	Environmental Protection—Consolidated Research Grants.
66.501	Air Pollution Control Research Grants.
66.502	Pesticides Control Research Grants.
66.504	Solid Waste Disposal Research Grants.
*66.505	Water Pollution Control—Research, Development, and Demonstration Grants.
*66.506	Safe Drinking Water Research and Demonstration Grants.
66.507	Toxic Substances Research Grants.

Direct Development Activities

*1. Real Property Acquisition or Disposition, Including Obtaining Major Leases or Easements.

*2. Construction of New EPA Facilities.

*3. EPA Issued Plans and Permits Which Do Not Impact Interstate Areas.

Dated: June 17, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-17038 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
June 24, 1983

Part XVIII

Equal Employment Opportunity Commission

Intergovernmental Review of Equal Employment Opportunity Commission Programs and Activities; Notice

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Intergovernmental Review Of Equal Employment Opportunity Commission Programs and Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Executive Order 12372, "Intergovernmental Review of Federal Programs," and agency regulations published in today's Federal Register are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Commission is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Commission's programs are subject to the Order. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: S. Jennifer Johnson (telephone 202-634-6592), Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3219) the Equal Employment Opportunity Commission, along with 25 other federal agencies, published notices proposing that their programs not be subject to the Order or Notices of Proposed Rulemaking (NPRM). Subsequently, two or more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Commission, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Commission received no comments specifically related to the proposed exclusion of all of its programs and activities from coverage under the Order. The Commission also was provided copies of selected comments received by OMB or the federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Commission considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order, and that elected officials of state and local governments are the only proper parties to decide what should be excluded from the state process of intergovernmental review. Other commenters objected to the various criteria used by federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. Further, it is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate.

The Commission has concluded that, presently, none of its programs or activities are covered by the Executive Order. When new programs or activities are authorized or initiated by the Commission, the Commission will determine whether these new programs or activities fall within the scope of the Order. If the Commission intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register.** If the determination is made that a new or additional program should be included, the Commission will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have views considered by the Commission under any consultation procedures provided for in existing or future program statutes.

Issued at Washington, D.C., June 14, 1983.
For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 83-16500 Filed 6-23-83; 8:45 am]

BILLING CODE 6570-06-M

federal register

Friday
June 24, 1983

Part XIX

Federal Emergency Management Agency

Intergovernmental Review of the Federal Emergency Management Programs and Activities; Final Rule and List of Programs and Activities which Are Subject to FEMA Regulation 44 CFR Part 4

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 4, 9, 59, 60, 76, 300 and 302

Intergovernmental Review of the Federal Emergency Management Agency Programs and Activities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final Rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to Federal financial assistance and direct Federal development programs and activities of FEMA. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Assistant General Counsel, (202) 287-0377.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3222) the FEMA, along with 25 other Federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. FEMA, in conjunction with the other 27 Federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies and which were also incorporated in FEMA's rulemaking docket, FEMA received approximately 75 comments on government-wide issues during the comment period. In addition, FEMA received 11 comments specifically related to the inclusion or exclusion of its programs from the coverage of the Order or other issues pertaining only to the FEMA.

In preparing the final rule, FEMA considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 Federal agencies that are issuing a final rule, FEMA has made several changes from the proposed rule. FEMA is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with State and local elected officials and to accommodate their concerns to the greatest extent possible.

Several State, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give State and local elected officials more time to establish the state processes and to consider which Federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983, (48 FR 15587, April 11, 1983). FEMA's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982, (47 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental parternership and a strengthened Federalism by relying on state and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order:

—Allows States, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not;
—Allows States to simplify, consolidate, or substitute State plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the State process, the single point of contact, and the Federal agency's "accommodate or explain" response to State and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which State and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A State must tell the Federal agency which programs and activities are being included under the state process, and (2) a State must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that States are also to consult with local governments when establishing that state process.) Any other components are at the discretion of the State. This lack of prescriptiveness gives State and local officials the flexibility to design a process that responds to their interests and needs.

A State is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how Federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed Federal financial assistance or direct Federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for Federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected

officials, the State selects which of these Federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

The Federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the Federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The State single point of contact, which may be an offical or organization, is the only party that can initiate the "accomodate or explain" response by Federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accomodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for Federal agency consideration any views differing from a state process recommendation and receiving a written explanation of a Federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact although a State could choose to broaden the single point of contact role.

The single point of contact need not submit for Federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can then submit such views directly to Federal agency.

A State need not designate a single point of contact. However, if a State fails to designate a single point of contact, no other entity or official can transmit recommendations to asure an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the Federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the Federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal Agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting State, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the State need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed action under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, FEMA altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule	Final rule
Section:	Section:
4.1	4.1.
4.2	4.2.
4.3	4.3.
4.4(a)	Deleted.
4.4(b) (1) & (2)	4.7(a).
4.4(b) (3) thru (7)	Deleted.
4.5(a)	4.6(b).
(b)	4.6(d).
(c)	4.6(c).
4.6(a)	4.5(b).
(b)	4.8(a).
(c)	Deleted.
(d)	4.9.
4.7(a)	4.10(a).
4.7(b)	4.7(b) & (c).
4.8	4.11.
4.9	4.12.
4.10	4.13.

Portions of the final rule not listed in this Table (4.5, 4.6(a), 4.7(b), and 4.8(c)) are new.

Section 4.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act.

The text of section 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of the Department of Agriculture's document).

A broad spectrum of commenters, including State, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that Federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Subsection (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out FEMA's responsibilities under these statutory provisions.

Section 401 emphasizes that Federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. FEMA when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between FEMA and other Federal agencies on one hand, and State and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of Federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are bases. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the FEMA is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 4.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. FEMA does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, it mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, FEMA would not use the term in any but its commonly understood sense.

FEMA chose not to include a definition of "state plans," "direct Federal development," or "Federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to Federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of State plans and program inclusions accompanying this rulemaking provide adequate operational information upon which State and local elected officials can act.

FEMA also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overeinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain reqirements in unusual circumstances is to give Federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, FEMA expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit the scope of this flexibility by anticipating all possible circumstances when it might be needed.

FEMA also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 4.10. In this section, the Director accepts the state process recommendation or reaches a mutually agreeable solution. If FEMA does not provide an accommodation in one of these two ways, it must provide an explanation. Since FEMA believes the section describes sufficiently what is meant by accommodation, a further difinition of the term is not helpful.

Finally, FEMA considered whether to include a definition of the term "state process recommendation." FEMA concluded that a definition of this term would not materially help clarify those situations in which FEMA has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 4.3 What programs and activities of FEMA are subject to these regulations?

This section is substantively very similar to section 3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the Federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development programs and activities, and the Order mandates consultation only when State and local governments provide non-Federal funds for, or are directly affected by, the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many national security actions, even those affecting State and local jurisdictions, involve classified information. It is meaningless to expect State and local review of national security matters, for example, when access to the plans or documents for the proposed Federal action is not possible for national security reasons. It is appropriate for Federal agencies to decide which of their activities are Federal financial assistance or direct Federal development.

There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which State and local coordination and consultation are not appropriate (e.g., formulation of FEMA's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of State and local government.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, FEMA believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. However, in response to comments, FEMA has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in

more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, FEMA is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule in order to allow future changes to be made more conveniently. FEMA will seek public comment on proposed future program or activity exclusions as these occur.

Section 4.4 What are the Director's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM. FEMA included this section in the proposed rule but has decided to delete it in the final rule and insert certain of the provisions in § 4.7(a).

Section 4.5 What is the Director's obligation with respect to Federal interagency coordination?

Some FEMA comments, including those suggesting a Federal single point of contact, asked other Federal agencies to do more in ensuring that Federal agencies communicate not only with State and local elected officials but also with each other. FEMA believes that this point is well taken. Many programs and projects require information or approvals from a number of Federal agencies, and Federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, FEMA is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Director, to the extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and FEMA regarding programs and activities covered under these regulations.

Section 4.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the Federal Register list prescribed by § 4.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that States are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the States' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the State submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between State and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by State and local elected officials in cooperation and consultation with one another. FEMA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, FEMA does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a State before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 4.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the State must submit to the Director with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of States to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows FEMA to establish deadlines for States to inform the Director of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a State chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 4.7, discussed below.

Section 4.7 How does the Director communicate with State and local officials concerning the FEMA's programs and activities?

Paragraph (a) incorporates material from § 4.4(b) of the NPRM, except that the final regulation specifies that the Director's obligation to communicate with State and local elected officials applied to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other State government entity, that the Director will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. FEMA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. FEMA may also take the initiative at any time to contact any interested person or entity about one of its programs or activities. Further, FEMA need not rely on the state process or the single point of contact to bring about this communication or consultation.

When FEMA notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. FEMA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how FEMA communicates with local elected officials in situations where a State does

not have a state process or where the state process does not cover a particular program or activity. FEMA will carry out its responsibilities in these situations by providing notice to State, areawide, regional or local officials or entities that would be directly affected by the proposed Federal financial assistance or direct Federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed Federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in FEMA should be contacted for more information.

Section 4.8 How does the Director provide States the opportunity of commenting on proposed Federal financial assistance and direct Federal development?

More commenters—over a third of the total—addressed § 4.6(b) of the NPRM (redesignated § 4.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Director would give States at least 30 days to comment on any proposed Federal financial assistance or direct Federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the State need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to States either at their discretion or when disputes needed to be resolved.

In response to these comments, FEMA has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Director will establish, by notice to the single point of contact or to directly affected entities, a date from which the 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, FEMA will provide notice, including any adjustments to the comment period that may be necessary, to directly affected State, areawide, regional and local entities regarding the proposed Federal action. Because paragraphs (a) and (b) now provide that the Director will establish this starting date, the language of the NPRM permitting the Director to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Director will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from §4.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with FEMA have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the State level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. FEMA is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to include provisions in the rule for applicants to submit notices of intent or full and complete applications at particular points in time to the state process. FEMA encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (d) of § 4.6 of the NPRM has been dropped. A new § 4.9 of the final rule describes how the Director receives and responds to comments.

Section 4.9 How does the Director receive and respond to comments?

This new section replaces § 4.6(d) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 4.6(d) had provided that the Director would respond as provided in the Order to all comments from a State that are provided through a state office or official that acts as a single point of contact under the Order between the State and th Federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a State instead of only one. The reasons expresed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and FEMA's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, FEMA has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implemention of the Executive Order requires a means of handling the communication and information flow between Federal-State/local and State/local-Federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all Federal agencies and all parties within a State know that a particular office or official performs this State/local-Federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of State and local elected officials on proposed Federal actions. It does not matter to FEMA whether this single point of contact also has a substantive role in preparing comments. That is up to the State and local elected officials who establish each state process. FEMA is concerned only that the single point of contact communicate those comments and recommendations to FEMA.

Paragraph (a) obligates the Director to follow the "accommodate or explain" procedures of § 4.10 if two conditions are met. First, the State must have designated a single point of contact. Second,the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to FEMA.)

If these conditions are not met, the Director will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the State and Federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that Federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of State and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that State and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where States and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, FEMA will always fully consider all comments it receives under these regulations.

FEMA's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out FEMA's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, FEMA will respond as provided in § 4.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from FEMA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a State are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by FEMA.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to FEMA before the review and comment period ends. These entities may also choose to send their comments directly to FEMA concurrent with their sending them to the state process to ensure their comments being considered in a timely manner.

Paragraph (b)(2) obligates the single point of contact to transmit to FEMA all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, FEMA considers all views from State, areawide, regional, and local entities or officials. It should also reassure concerned officials that their views are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), FEMA makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to FEMA. FEMA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of FEMA.

Paragraph (e) simply reiterates FEMA obligation to consider all the comments it receives from State, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to FEMA. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that FEMA and other Federal agencies impose various administrative requirement with respect to financial assistance programs. Among the suggestions were that Federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that Federal agencies not act on an application before receiving comments from the state process, that Federal agencies require applicants to submit materials requested by the state process, and that Federal agencies have applicants themselves contact interested local parties.

Although FEMA recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, FEMA does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. FEMA believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, FEMA will expect the applicant to forward those comments with its application to FEMA. However, this does not obviate the necessity for transmitting the state process recommendation to FEMA through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by FEMA.

Section 4.10 How does the Director make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to FEMA through a single point of contact, FEMA becomes obligated to accommodate or explain. This means that FEMA need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. FEMA will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing.

This is not to say that FEMA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, FEMA will always send a written explanation of the nonaccommodation.

As under the proposed rule, FEMA will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, FEMA believes that to avoid unduly delaying the award of Federal financial assistance or the start of direct Federal development, a longer period should not be provided. FEMA believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the State.

FEMA has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If FEMA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communcation, even though the written explanation arrives later. If FEMA sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date in which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, FEMA will be free to begin carrying out its decision on the sixteenth day after the day FEMA sent the letter.

Some commenters indicated what they sought most was Federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, FEMA will make an effort to be as responsive as practicable consistent with FEMA's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 4.11 What are the Director's obligations in interstate situation?

This section is based on § 4.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

FEMA received several comments on its handling of interstate situations. Most of these comments asked for greater Federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

FEMA does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in FEMA's interest to have affected States mutually agree on FEMA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, FEMA will work with officials of States involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

FEMA believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which FEMA will make efforts to notify in interstate situations. OMB will periodically provide FEMA with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by FEMA if it is sent through a State single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by FEMA, and that recommendation is transmitted to FEMA through the single point of contact of either Maryland, Virginia, or the District of Columbia, FEMA is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another State's single point of contact, FEMA would also accommodate or explain that recommendation as well.

Section 4.12 How may a State simplify, consolidate or substitute Federally required State plans?

This section is unchanged from the NPRM. FEMA did receive a number of comments on this section, however. Several agreed that States should be able to simplify state plans, but objected to allowing states to consolidate their plans. None of the comments were on any of FEMA's plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of State plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that Federal agencies allow the consolidation of state plans, FEMA had little discretion in developing this provision. In addition, FEMA has the obligation to ensure that any simplified or consolidated State plan continues to meet all Federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted in that respect.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. FEMA believes that such a process is not necessary, because if a Federal agency disapproves a modified plan for failure to meet Federal requirements, the State can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, FEMA will work with States to resolve problems that could impede approval.

A few commenters recommended there be a Federal "single point of contact" for State plans or other purposes. FEMA believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various Federal agencies carry out. In addition, Federal agencies need to retain existing delegations of State plan approval authority. However, FEMA and other Federal agencies will each designate a focal point with whom States can deal on State plan matters. In addition, the Federal agencies having State plans intend to establish an informal interagency steering group, which will meet quarterly to discuss State plan

matters. Through this steering group, as well as by interagency contacts in specific situations, Federal agencies will coordinate with each other in cases when States consolidate plans across Federal lines. This coordination should promote consistent determinations among and within agencies on State plans.

Finally, one commenter suggested that the Federal agencies develop a model State plan format that could be used by the States. While we are willing to provide suggestions in response to specific State questions (including providing formats that have been used successfully by other States), we believe that States should be free to develop their own formats to reflect their own situations. Consequently, FEMA will not develop model formats, since formats developed as models for the voluntary use of States could come to be regarded, either by Federal Agencies or by States, as required.

A list of State plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's **Federal Register** and will be updated periodically.

Section 4.13 May the director waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing Federal noncompliance with the Executive Order. FEMA is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If FEMA uses the emergency waiver provision, FEMA will attempt, to the extent feasible and meaningful, to involve the State process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, FEMA will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to FEMA to which FEMA would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that Federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that Federal agencies are not really interested in consulting with State and local government and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

FEMA wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from State, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to FEMA's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to Federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to Federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of FEMA are responsible to the Director, who in turn is responsible to the President for carrying out important Administration policy.

Finally, a number of commenters reminded FEMA and other agencies that we should continue to follow existing statutory requirements that affect many Federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. FEMA will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, FEMA will work with States to integrate handling of some of these crosscutting requirements with the official State process. However, regardless of the structure of a State's process or whether there is a State process at all, FEMA will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a State could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Executive Order 12291, paperork Reduction Act, and Regulatory Flexibility Act

FEMA has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with FEMA and allow State and local governments to establish cost effective consultation procedures. For this reason, FEMA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently FEMA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork reduction Act, since it does not require the collection or retention of information.

Scope

The Federal Emergency Management Agency received directly 23 comments directed to it including one Federal agency, 14 States, and 8 areawide organization groups. A few sent comments more than one time.

In addition, the Office of Management and Budget and other Federal agencies furnished FEMA with comments provided from at least 19 States or State agencies, 4 association of officials, 23 areawide organization groups, summaries of 3 public meetings, prepared statements from one Congressional hearing, two letters from Members of Congress. These had been sent to OMB or other Federal agencies and are applicable to the FEMA proposed regulations. Many of the commenters sent in several comments and there is some overlap with FEMA figures.

Most of the comments submitted to FEMA concerned the common regulations. Only 11 (including Hawaii

and Michigan which made submissions to OMB) of those submitting comments addressed issues specific to FEMA, and its inclusion and exclusion of programs. At NPR stage, FEMA published both a list of inclusions as well as exclusions.

There were, of course, some general comments which objected to any exclusion, other than those selected by the States. This matter is addressed elsewhere in this preamble.

One commenter had no objections to the two lists. A few endorsed the inclusion of program which are on the list of FEMA inclusions, such as the State Assistance Programs under the Flood Insurance Act, and disaster preparedness grants. Three programs were listed which have now been discontinued and will no longer be in the Catalog of Federal Disaster Assistance. These programs are not listed because they are no longer separately funded (public education assistance, arson task force and Academy planning assistance).

One commenter listed a program involving claims for reimbursement for fire-fighting. This involves only reimbursement for services rendered on submission of billing and there is nothing to consult about.

Two commenters recommended listing the Disaster Relief Program. With respect to assistance under the Disaster Relief Act of 1974, this program is not subject to the A-95 process. A reason given for including the program was that overall program direction should be discussed through consultation. Overall program direction is covered by other rulemaking and is not subject to the provisions of the Executive Order. However, FEMA has listed grants, loans, or other financial assistance under sections 402 and 414 of the Act as an included program. Section 402 relates in some cases to long-term repair, restoration or reconstruction of public facilities belonging to State or local governments or certain private nonprofit agencies engaged in specified activities. Section 414 deals with community disaster loans. These programs are also subject to the existing consultation which goes on between the FEMA Regional Director and the Governor or his/her authorized representative, and which is reflected in the Federal-State Agreement. Assistance under the Disaster Relief Act of 1974 which is in the nature of emergency activities taken in a matter of days or hours during or immediately after the disaster is excluded. There is no time for Executive Order 12372-type consultation. There is, of course, the consultation between FEMA and the States which result from the Federal-State Agreements established as a matter of course. This consultation is concurrent with and after the disaster. This is extensive, and involves elected officials.

Assistance to individuals in connection with disaster relief is excluded.

With respect to flood insurance, there were 8 commenters. One stated that any substantial new construction or rehabilitation of facilities or alteration of the natural environment should be included. One commenter thought floodplain management aspects of the program (community eligibility, identification of special hazard areas and flood elevation determinations) should not be excluded. Another commenter thought that several components of the program are likely to have impacts on several governments such as a county in which a municipality is located. Opportunity for review would facilitate coordinated efforts to promote effective floodplain management. Another commenter included the program as one which might involve development of facilities which impact on environment through creating additional demands.

The only aspect of the flood insurance program subject to the A-95 process is that in connection with determination of community eligibility. Neither identification of floodprone areas nor furnishing of flood elevation determinations involve any financial assistance. There are no non-Federal funds involved in furnishing of technical data and advisory services which comprise this activity. The statutes and FEMA regulations (44 CFR Parts 66 and 67) establish elaborate consultation and appeal processes requiring consultation with local and State officials also. These consultations cover all aspects of the studies which are performed to make the determination. A special consultation coordination officer for each community may be appointed.

With respect to community eligibility, again there is no Federal financial assistance involved. A community applying for flood insurance is required to submit various data including legislative materials, citations to land use regulations, the community floodplain management regulation, building codes, etc.

A community presently is required to make a number of commitments to effectuate floodplain management. Copies of the document and evidence of required actions are submitted for State and local review. However, FEMA regulations expressly provide that State and local review is not a prerequisite for acceptance of a community application for availability of flood insurance, nor for conversion from the emergency program to the regular program. Quite often communities are accepted into the emergency program in a matter of a few days. These existing provisions are being deleted as they referred to A-95.

Other State and local review can assist and become involved with the applicant community assuring maximum consistency with State, regional, and local comprehensive plans and floodplain management programs, including land use plans, but this is a State or local matter with no need for any Federal intervention. Any meaningful consultation is entirely at the community level and there is little if anything to discuss with the Federal Government other than a determination as to whether or not the community is eligible so that flood insurance can be sold to private individuals.

For these reasons the flood insurance program will not be included in the FEMA list of inclusions.

The proposed list has been revised to conform to new titles to be used in the latest Catalog of Domestic Assistance and to add programs inadvertently omitted from the prior list. With one exception (Acquisition of Flood Damaged Structures), none of the programs listed are listed as subject to review required by section 204 of the Demonstration Cities Act.

List of Subjects in 44 CFR Part 4

Intergovernmental relations.

1. For the reasons set out in the Preamble, the Federal Emergency Management Agency amends Title 44, Code of Federal Regulations, by adding a new Part 4, to read as follows:

PART 4—INTERGOVERNMENTAL REVIEW OF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAMS AND ACTIVITIES

Sec.

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 4.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of FEMA, and are not intended to create any right or benefit enforceable at law by a party against FEMA or its officers.

§ 4.2 What definitions apply to these regulations?

"FEMA" means the Federal Emergency Management Agency.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of FEMA or an official or employee of FEMA acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 4.3 What programs and activities of FEMA are subject to these regulations?

The Director publishes in the Federal Register a list of FEMA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 4.4 [Reserved]

§ 4.5 What is the Director's obligation with respect to Federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and FEMA regarding programs and activities covered under these regulations.

§ 4.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the Federal Register in accordance with § 4.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Director of FEMA's programs and activities selected for that process.

(c) A State may notify the Director of changes in its selections at any time. For each change, the State shall submit to the Director an assurance that the State has consulted with local elected officials regarding the change. FEMA may establish deadlines by which States are required to inform the Director of changes in their program selections.

(d) The Director uses a State's process as soon as feasible, depending on individual programs and activities, after the Director is notified of its selections.

§ 4.7 How does the Director communicate with State and local officials concerning FEMA's programs and activities?

(a) For those programs and activities covered by a state process under § 4.6, the Director, to the extent permitted by law: (1) uses the state process to determine views of State and local elected officials; and, (2) communicates with State and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance of development involves a program or activity not selected for the state process.

This notice may be made by publication in the Federal Register or other appropriate means, which FEMA in its discretion deems appropriate.

§ 4.8 How does the Director provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Director gives state processes or directly affected State, areawide, regional and local officials and entities at least 60 days from the date established by the Director to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with FEMA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 4.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 4.10 if:

(1) A State office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 4.6.

(b) (1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a state process recommendation, State, areawide, regional and local officials and entities may submit comments to FEMA.

(d) If a program or activity is not selected for a state process, State, areawide, regional and local officials and entities may submit comments to FEMA. In addition, if a state process

recommendation for a nonselected program or activity is transmitted to FEMA by the single point of contact, the Director follows the procedures of § 4.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 4.10 of this part, when such comments are provided by a single point of contact, by the applicant or directly to FEMA by a commenting party.

§ 4.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to FEMA through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) FEMA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 4.11 What are the Director's obligations in interstate situations?

(a) The Director is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select FEMA's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select FEMA's progam or activity;

(4) Responding pursuant to § 4.10 of this part if the Director receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with FEMA have been delegated.

(b) The Director uses the procedures in § 4.10 if a state process provides a state process recommendation to FEMA through a single point of contact.

§ 4.12 How may a State simplify, consolidate, or substitute Federally required State plans?

(a) As used in this section:

(1) "Simplify" means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) "Consolidate" means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Director.

(c) The Director reviews each state plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 4.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

§ 9.8 [Amended]

2. Section 9.8(b)(2) is amended by removing the phrase "and OMB Circular A-95".

3. Section 9.8(c)(4)(i) is removed.

§ 9.12 [Amended]

4. Section 9.12(a) is amended by removing the first sentence.

PART 59—GENERAL PROVISIONS

§ 59.22 [Amended]

5. Section 59.22(d) is removed.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

§ 60.2 [Amended]

6. Section 60.2(i) is removed.

PART 76—STATE ASSISTANCE PROGRAM FOR THE NATIONAL FLOOD INSURANCE PROGRAM

§ 76.4 [Amended]

7. Section 76.4(c)(3)(vii) is removed.

PART 300—DISASTER PREPAREDNESS ASSISTANCE

§ 300.5 [Amended]

8. Section 300.5(i) is amended by removing from the introductory paragraph the words "the appropriate provisions of OMB Circular A-95 Revised. Evaluation, review and coordination of Federal and Federally-assisted programs (January 2, 1976);"

9. Section 300.5(i)(1) is removed.

10. Section 300.5(i)(2)(v) is removed.

11. Section 300.5(i)(3)(i) is amended by removing the words "The State clearinghouse."

PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAMS (CONTRIBUTIONS FOR PERSONNEL AND ADMINISTRATIVE EXPENSES)

§ 302.5 [Amended]

12. Section 302.5(b) is amended by removing in the introductory paragraph the following: "(including the requirement of a 45 day period for comment by the Governor)."

Dated: June 9, 1983.

Louis O. Giuffrida,

Director.

[FR Doc. 83-16446 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

List of Programs and Activites Which Are Subject to FEMA Regulation 44 CFR Part 4

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

The programs listed below are those FEMA financial assistance programs which are subject to FEMA rule 44 CFR Part 4, "Intergovernmental Review of Federal Emergency Management Agency Programs and Activities."

1. Financial assistance under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251 *et seq.*, including without limitation:
   - (a) Emergency Management Assistance 83.503
   - (b) Population Protection Planning 83.514
   - (c) Shelter Surveys 83.509
   - (d) State Radiological Defose Officers 83.511
   - (e) Radiological Systems Maintenance 83.506
   - (f) State and Local Maintenance and Services 83.504
   - (g) State and Local Warning and Communications 83.513
   - (h) State and Local Emergency Operating Centers 83.512
   - (i) Emergency Management Training 83.403
2. The State assistance program under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, *et seq* 83.501
*3. Acquisition of flood damaged structures under sec. 1362 of the National Flood Insurance Act of 1968, as amended, 42, U.S.C. 4103 ..... 83.502
4. Earthquake Hazards Reduction Act, 42 U.S.C. 7701, *et seq* .....
5. Disaster preparedness grants 83.505
6. Earthquake and hurricane preparedness planning grants 83.506
7. Grants, loans, or other financial assistance under secs. 402 and 414 of the Disaster Relief Act of 1974, as amended, 42 U.S.C. 5172, 5184 ..... 83.516
8. State fire incident reporting assistance under Federal Fire Prevention and Control Act 83.407

*Program subject to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

Dated: June 9, 1983.

George Jett,

General Counsel.

[FR Doc. 83-16447 Filed 6-23-83; 8:45 am]

BILLING CODE 6718-01-M

federal register

Friday
June 24, 1983

Part XX

General Services Administration

Intergovernmental Review of General Services Administration Programs and Activities; Final Rule and

State Process Selection Listing; Notice

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Amendment A-35]

Intergovernmental Review of General Services Administration Programs and Activities

AGENCY: General Services Administration

ACTION: Final rule.

SUMMARY: This regulation implements Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulation applies to Federal financial assistance and direct Federal development programs and activities of the General Services Administration (GSA). Executive Order 12372 and this regulation, are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. MacKinnon, Director, Special Projects Staff (DX) (202-535-7215).

SUPPLEMENTARY INFORMATION:

On January 24, 1983, GSA, along with 25 other Federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order (48 FR 3232-3238). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. GSA, in conjunction with the other 27 Federal agencies and OMB, published a notice in the Federal Register on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies and which were also incorporated in GSA's rulemaking docket, GSA received approximately 160 comments on government-wide issues during the comment period. In addition, GSA received two comments specifically related to the inclusion or exclusion of GSA's programs from the coverage of the Order or other issues pertaining only to GSA.

In preparing the final rule, GSA considered these comments as well as testimony at public meetings held in Washington, DC, on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 Federal agencies that are issuing a final rule, GSA has made several changes from the proposed rule. GSA is fully committed to carrying out Executive Order 12372, and intends through this regulation to communicate effectively with State and local elected officials and to accommodate their concerns to the greatest extent possible.

Several State, local, and regional agencies asked that the regulation not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give State and local elected officials more time to establish the State processes and to consider which Federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of this final regulation until September 30, 1983 (48 FR 15587, April 11, 1983). GSA's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order:

—Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance and direct Federal development;
—Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not;
—Allows States to simplify, consolidate, or substitute State plans; and
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the State process, the single point of contact, and the Federal agency's "accommodate or explain" response to State and local comments submitted in the form of a recommendation.

State Process

The State process is the framework under which State and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the State process: (1) A State must tell the Federal agency which programs and activities are being included under the State process, and (2) a State must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that States are also to consult with local governments when establishing the State process.) Any other components are at the discretion of the State. This lack of prescriptiveness gives State and local officials the flexibility to design a process that responds to their interests and needs.

A State is not required to establish a State process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how Federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as September 30, 1983.

While not required by the rule, most State processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular State, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed Federal financial assistance or direct Federal development, and to aid in reaching a State process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for Federal assistance as to how an application is to be managed under the State process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the State selects which of these Federal programs and activities are to be reviewed through the State process

and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

The Federal agency provides the State process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the State has among its options those of: Preparing and transmitting a State process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to State process procedures.

For proposed actions under programs or activities not selected, the Federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The State single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by Federal agencies. The single point of contact does so by transmitting a State process recommendation. (The terms "accommodate or explain" and State process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for Federal agency consideration any views differing from a State process recommendation, and receiving a written explanation of a Federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a State could choose to broaden the single point of contact role.

The single point of contact need not submit for Federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no State process recommendation. Commenting officials and entities can submit such views directly to the Federal agency.

A State need not designate a single point of contact. However, if a State fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the Federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a State process recommendation, the Federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "State process recommendation" is developed by commenting State, areawide, regional, and local officials and entities participating in the State process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A State process recommendation which is a consensus,—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a State process recommendation. Also, the State government need not be party to a State process recommendation.

A State process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, GSA altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (Section)
101-6.2101	101-6.2101.
101-6.2102	101-6.2102.
101-6.2103	101-6.2103.
101-6.2104	101-6.2104.
101-6.2105(a)	101-6.2106(b).
101-6.2105(b)	101-6.2106(d).
101-6.2105(c)	101-6.2106(c).
101-6.2106(a)	101-6.2108(b).
101-6.2106(b)	101-6.2107(a) Reserved.
101-6.2106(c)	101-6.2108(a).
101-6.2106(d)	Deleted.
101-6.2107(a)	101-6.2110(a).
101-6.2107(b)	101-6.2110(b), (c).
101-6.2108	101-6.2111.
101-6.2109	101-6.2112.
101-6.2110	101-6.2113.

Portions of the final rule not listed in this table (§ 101–6.2105, § 101–6.2106(a), § 101–6.2107(b), and § 101–6.2108(c) are new.

Section 101–6.2101. What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing Section 401 (31 USC 6506) of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. This statute provides conditions for intergovernmental policy and administration of development assistance programs. The text of Section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including State, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that Federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this section now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out GSA's responsibilities under this statutory provision.

Section 401 emphasizes that Federal actions should be as consistent as possible with planning activities and decisions at State, regional, and local levels. GSA, when considering and making efforts to accomodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between GSA and other Federal agencies on one hand, and State and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of Federal, State and local officials in communicating with one another and seeking to understand

one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, GSA is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 101–6.2102. What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. GSA does not believe it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, GSA would not use the term in any but its commonly understood sense.

GSA chose not to include a definition of "direct Federal development," or Federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to Federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate operational information upon which State and local elected officials can act.

GSA also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give Federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, GSA expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

GSA also does believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 101–6.2110. In this section, the Administrator accepts the State process recommendation or reaches a mutually agreeable solution. If GSA does not provide an accommodation in one of these two ways, it must provide an explanation. Since GSA believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, GSA considered whether to include a definition of the term "State process recommendation." GSA concluded that a definition of this term would not materially help clarify those situations in which GSA has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 101–6.2103. What programs and activities of GSA are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the State process are the only proper parties to decide what should be excluded from the State process. Other commenters objected to the various criteria used by the Federal agencies in developing their lists of programs and activities that were being proposed for exclusion. Although GSA has not proposed any exclusions, one commenter requested the exclusion of the National Historical Publications and Records Grants program. After review, GSA determined that there is not sufficient reason for this requested exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development programs and activities, and the order mandates consultation only when State and local governments provide non-Federal funds for, or are directly affected by, the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many national security actions, even those affecting State and local jurisdictions, involve classified information. It is meaningless to expect State and local review of national security matters, for example, when access to the plans or documents for the proposed Federal action is not possible for national security reasons. It is appropriate for Federal agencies to decide which of their activities are Federal financial assistance or direct Federal development.

There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which State and local coordination and consultation are not appropriate (e.g., formulation of GSA's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

To provide information on the activities and programs eligible for selection for State processes, GSA is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. GSA will seek public comment on proposed future program or activity exclusions as these occur.

Section 101–6.2104 What are the Administrator's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 101–6.2105 What is the Administrator's obligation with respect to Federal interagency coordination?

Some comments, including those suggesting a Federal single point of contact, asked GSA and other Federal agencies to do more in ensuring that Federal agencies communicate not only with State and local elected officials but also with each other. GSA believes this point is well taken. Many programs and projects require information or approvals from a number of Federal agencies, and Federal interagency

communication is as important, in many cases, as intergovernmental communication. Consequently, GSA is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Administrator, to the extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and GSA regarding programs and activities covered under these regulations.

Section 101–6.2106 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 101–6.2103 is eligible for selection for a State process. The paragraph also declares, more explicitly than the NPRM, that States are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the States' obligation in this regard, as well as in the establishment of a State process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the State submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of State processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between State and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by State and local elected officials in cooperation and consultation with one another. GSA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a State process. In particular, GSA does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a State before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, or § 101–6.2105 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the State must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of States to involve local elected officials in decisions concerning what programs are selected for the State process. The paragraph also allows GSA to establish deadlines for States to inform the Administrator of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid on short notice having to make midstream changes in coordination procedures. In addition, GSA has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a State chooses not to adopt a process under the Order or when a particular program or activity is not selected for a State process. This question is answered in paragraph (b) of § 101–6.2107, discussed below.

Section 101–6.2107 How does the Administrator communicate with State and local officials concerning GSA's programs and activities?

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a State process. GSA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a State process. GSA may also take the initiative at any time to contact any interested person or entity about one of GSA's programs or activities. Further, GSA need not rely on the State process or the single point of contact to bring about this communication or consultation.

When GSA notifies the State process with respect to a proposed action concerning a program or activity that has been selected for the State process, notification of areawide, regional, and local entities for purposes of sections 401 is the responsibility of the State process. The single point of contact could be the information channel for this purpose. GSA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how GSA communicates with local elected officials in situations where a State does not have a State process or where the State process does not cover a particular program or activity. GSA will carry out its responsibilities in these situations by providing notice to State, areawide, regional or local officials or entities that would be directly affected by the proposed Federal financial assistance or direct Federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed Federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in GSA should be contacted for more information.

Section 101–6.2108 How does the Administrator provide States the opportunity of commenting on proposed Federal financial assistance and direct Federal development?

More commenters—over a third of the total—addressed § 101–6.2106(c) of the NPRM (redesignated § 101–6.2108(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Administrator would give States at least 30 days to comment on any proposed Federal financial assistance or direct Federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the State need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to States either at their discretion or when disputes needed to be resolved.

In response to these comments, GSA has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Administrator will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the State process, GSA will provide notice, including any adjustments to the comment period that may be necessary, to directly affected State, areawide, regional and local entities regarding the proposed Federal action. Because

paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the State process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 101–6.2106(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with GSA have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the State level.

Paragraph (d) of § 101–6.2106 of the NPRM has been dropped. A new § 101–6.2109 of the final rule describes how the Administrator receives and responds to comments.

Section 101–6.2109 How does the Administrator receive and respond to comments?

This new section replaces § 101–6.2106(d) of the NPRM and elaborates in substantially greater detail the Administrator's obligations concerning the receipt of and response to comments. Section 101–6.2106(d) had provided that the Administrator would respond as provided in the Order to all comments from a State that are provided through a State office or official that acts as a single point of contact under the Order between the State and the Federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a State instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their State process. Second, some commenters felt the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials, and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and GSA's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, GSA has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between Federal-State/local and State/local-Federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels, if all Federal agencies and all parties within a State know that a particular office or official performs this State/local-Federal communications link for the State process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of State and local elected officials on proposed Federal actions. It does not matter to GSA whether this single point of contact also has a substantive role in preparing comments. That is up to the State and local elected officials who establish each State process. GSA is concerned only that the single point of contact communicate those comments and recommendations to GSA.

Paragraph (a) obligates the Administrator to follow the "accommodate or explain" procedures of § 101–6.2110 if two conditions are met. First, the State must have designated a single point of contact. Second, the single point of contact must have transmitted a State process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to GSA.) If these conditions are not met, the Administrator will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The State process recommendation provision is intended to clarify the reciprocal responsibilities of the State and Federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that Federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of State and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that State and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where States and other directly affected parties carry out these responsibilities by forging a State process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, GSA will always fully consider all comments it receives under these regulations.

GSA's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out GSA's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve, or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, GSA will respond as provided in § 101–6.2110 to a State process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from GSA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the State process recommendation, all officials and entities within a State are assured that comments that differ from the State process recommendation on a particular program or project will be seen and considered by GSA.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no State process recommendation. However, the single point of contact should advise the commenting officials and entities when a State process recommendation is not being transmitted so that these entities

will have sufficient time to send their views directly to GSA before the review and comment period ends. These entities may also choose to send their comments directly to GSA concurrent with their sending them to the State process.

Paragraph (b)(2) obligates the single point of contact to transmit to GSA all comments received concerning a selected program or activity that differ from a State process recommendation. This requirement will ensure that, as section 401 specifies, GSA considers all views from State, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), GSA makes provision for responding to comments in situations where there is no State process, or for programs that are not selected for a State process. Paragraph (c) provides that in the absence of a State process, or if the single point of contact does not transmit a State process recommendation, State, areawide, regional and local officials and entities may submit comments to GSA. GSA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the State process does not cover a particular program or activity of GSA.

Paragraph (e) simply reiterates GSA's obligation to consider all the comments it receives from State, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to GSA. This obligation derives directly from section 401.

Section 101–6.2110 How does the Administrator make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a State process provides a State process recommendation to GSA through a single point of contact, GSA becomes obligated to accommodate or explain. This means that GSA need not accommodate or explain comments that: (1) Do not constitute or form the State process recommendation, or (2) are not provided through a single point of contact. GSA will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a State process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the State process. In response to a substantial number of comments, subparagraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that GSA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, GSA will always send a written explanation of the nonaccommodation.

As under the proposed rule, GSA will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, GSA believes that to avoid unduly delaying the award of Federal financial assistance or the start of direct Federal development, a longer period should not be provided. GSA believes that ten days will be adequate time for the State process to formulate an appropriate political response if the issue is sufficiently important within the State.

GSA has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If GSA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If GSA sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration, and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, GSA will be free to begin carrying out its decision on the sixteenth day after the day GSA sent the letter.

Some commenters indicated what they sought most was Federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A–95. In providing explanations of nonaccommodation, GSA will make an effort to be as responsive as practicable consistent with GSA's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 101–6.2111 What are the Administrator's obligations in interstate situations?

This section is based on § 101–6.2108 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

GSA received several comments on handling of interstate situations. Most of these comments asked for greater Federal guidance or involvement in interstate situations, especially when various affected States did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

GSA does not believe it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in GSA's interest to have affected States mutually agree on GSA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, GSA will work with officials of States involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

GSA believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which GSA will make efforts to notify in interstate situations. OMB will periodically provide GSA with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by GSA if it is sent through a State single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a State process.

For example, the Metropolitan Washington, DC Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role, and makes a recommendation on a proposed action by GSA, and that recommendation is transmitted to GSA through the single point of contact of either Maryland, Virginia, or the District of Columbia, GSA is obligated to accommodate or

explain. If a State process recommendation differing from the Washington COG recommendation is also transmitted by another State's single point of contact, GSA would also accommodate or explain that recommendation as well.

Section 101–6.2112 How may a State simplify, consolidate or substitute Federally required State plans?

This section is unchanged from the NPRM. GSA did receive a number of comments on this section, however. Several agreed that States should be able to simplify State plans, but objected to allowing States to consolidate their plans. The reason for these objections differed; most appeared to be from those who feared that consolidation of State plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that Federal agencies allow the consolidation of State plans, GSA had little discretion in developing this provision. In addition, GSA has the obligation to ensure that any simplified or consolidated State plan continues to meet all Federal requirements. For example, a consolidated plan that failed to meet statutory or regularly requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which Federal agencies disapprove modified State plans. GSA believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet Federal requirements, the State can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, GSA will work with States to resolve problems that could impede approval.

A few commenters recommended there be a Federal "single point of contact" for State plans or other purposes. GSA believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various Federal agencies carry out. In addition, Federal agencies need to retain existing delegations of State plan approval authority. However, GSA and other Federal agencies will each designate focal points with whom States can deal on State plan matters. In addition, the Federal agencies having State plans intend to establish an informal interagency steering group, which will meet quarterly to discuss State plan matters. Through this steering group, as well as by interagency contacts in specific situations, Federal agencies will coordinate with each other in cases when States consolidate plans across Federal lines. This coordination should promote consistent determinations among and within agencies on State plans.

Finally, one commenter suggested that the Federal agencies develop a model State plan format that could be used by the States. While GSA is willing to provide suggestions in response to specific State questions (including providing formats that have been used successfully by other States), GSA believes that States should be free to develop their own formats to reflect their own situations. Consequently, GSA will not develop model formats, since formats developed as models for the voluntary use of States could come to be regarded, either by Federal agencies or by States, as required. A list of State plans that may be simplified, consolidated, or substitutional for, appears elsewhere in today's **Federal Register** and will be updated periodically. GSA presently has no State plans appearing on this list.

Section 101–6.2113 May the Administrator waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing Federal noncompliance with the Executive Order. GSA is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If GSA uses the emergency waiver provision, GSA will attempt, to the extent feasible and meaningful, to involve the State process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, GSA will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to GSA to which GSA would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that Federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that Federal agencies are not really interested in consulting with State and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

GSA wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from State, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to GSA's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to Federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to Federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of GSA are responsible to the Administrator, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded GSA and other agencies that we should continue to follow existing statutory requirements that affect many Federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. GSA will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, GSA will work with States to integrate handling of some of these crosscutting requirements with the official State process. However, regardless of the structure of a State's process or whether there is a State process at all, GSA will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone

management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a State could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the State that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

GSA has determined that this is not a major rule under Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The rule will simplify consultation with GSA and allow State and local governments to establish cost effective consultation procedures. For this reason, GSA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, GSA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of subjects in 41 CFR Part 101-6
Intergovernmental relations

For the reasons set out in the Preamble, the General Services Administration amends Title 41, Code of Federal Regulations, by adding a new Subpart 101-6.21 to Part 101-6 to read as follows:

PART 101-6—MISCELLANEOUS REGULATIONS

Subpart 101-6.21—Intergovernmental Review of General Services Administration Programs and Activities

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506)

§ 101-6.2100 Scope of subpart.

This subpart implements Executive Order 12372, "Intergovernmental Review of Federal Programs", for Federal financial assistance and direct Federal development programs of the General Services Administration (GSA).

§ 101-6.2101 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovenmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of GSA, and are not intended to create any right or benefit enforceable at law by a party against GSA or its officers.

§ 101-6.2102 What definitions apply to these regulations?

"GSA" means the U.S. General Services Administration.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Administrator" means the Administrator of General Services or an official or employee of GSA acting for the Administrator under a delegation of authority.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 101-6.2103 What programs and activities of GSA are subject to these regulations?

The Administrator publishes in the **Federal Register** a list of GSA's programs and activities that are subject to these regulations.

§ 101-6.2104 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, GSA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 101-6.2105 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and GSA regarding programs and activities covered under these regulations.

§ 101-6.2106 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the Federal Register in accordance with § 101-6.2103 of this Part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of the GSA programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with elected local elected officials regarding the change. GSA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 101-6.2107 How does the Administrator communicate with State and local officials concerning GSA's programs and activities?

(a) [Reserved]

(b) The Administrator provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

Note.—This notice may be made by publication in the Federal Register or other appropriate means, which GSA in its discretion deems appropriate.

§ 101-6.2108 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives State processes or directly affected State, areawide, regional and local officials and entities at least:

(1) [Reserved]

(2) 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with GSA have been delegated.

§ 101-6.2109 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 101-6.2110 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 101-6.2106.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments to GSA.

(d) If a program or activity is not selected for a State process, State, areawide, regional and local officials and entities may submit comments to GSA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to GSA by the single point of contact, the Administrator follows the procedures of § 101-6.2110 of this Part.

(e) The Administrator considers comments which do not constitute a State process recommendation submitted under these regulations, and for which the Administrator is not required to apply the procedures of § 101-6.2110 of this Part, when such comments are provided by a single point of contact, or directly to GSA by a commenting party.

§ 101-6.2110 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a State process provides a State process recommendation to GSA through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with such written explanation of its decision, as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) GSA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 101-6.2111 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in States which have adopted a process and which have selected a GSA program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or have not selected a GSA program or activity; and

(4) Responding pursuant to § 101-6.2110 of this Part if the Administrator

receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with GSA have been delegated.

(b) The Administrator uses the procedures in § 101–6.2110 if a State process provides a State process recommendation to GSA through a single point of contact.

§ 101–6.2112 How may a State simplify, consolidate, or substitute Federally required State plans?

(a) As used in this section:

(1) "Simplify" means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) "Consolidate" means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Administrator.

(c) The Administrator reviews each State plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 101–6.2113 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

Dated: June 17, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83–16938 Filed 6–23–83; 8:45 am]

BILLING CODE 6820–96–M

GENERAL SERVICES ADMINISTRATION

State Process Selection Listing

Section 101–.6.2104 of the preamble to Part 101–6—Miscellaneous Regulations, which is printed elsewhere in today's Federal Register, specifies that the General Services Administration will publish a listing of "included" programs and activities for State selection in accordance with the provisions of Executive Order 12372. The following programs of the General Services Administration are hereby listed as being eligible for selection for State processes in accordance with the terms of the Executive Order, and Part 101–6.

Public Buildings Construction

41 CFR 101–18.100 (e) Lease Construction Projects.

Public Buildings Construction

41 CFR 101–19.100 Intergovernmental Consultation on Federal Projects.

Real Property Disposal Program

41 CFR 101–47.303–2 Disposals to Public Agencies.

Records Management

41 CFR 105–65.203 State Records Program Organization.

Requests for additional information should be addressed to: General Services Administration (DX), Washington, DC 20405.

Dated: June 17, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83–16939 Filed 6–23–83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XXI

National Aeronautics and Space Administration

Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final Rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to direct Federal development programs and activities of the National Aeronautics and Space Administration. Executive Order 12372 and these regulations replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: James M. Bayne, (202) 755-3647.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3240) this Agency along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Agency, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Agency's rulemaking docket, the Agency received approximately 160 comments on government-wide issues during the comment period. In addition, the Agency received 12 comments specifically related to the inclusion or exclusion of this Agency's programs from the coverage of the order or other issues pertaining only to the Agency.

In preparing the final rule, the Agency considered these comments, as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and other 22 federal agencies that are issuing final rules, the Agency has made several changes from the proposed rule. The Agency is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated, to give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Agency's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed Federal financial assistance and direct federal development. NASA has no Federal financial assistance activities, and these regulations therefore, are concerned only with direct Federal development activities. As it applies to this Agency, the Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views and or explain why not; and
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out their review of Federal activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell each federal agency which of that Agency's programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials in establishing the state process and in changing the list of selected programs and activities. Any other components are at the discretion of the state, giving state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968.

While not required by the rule, most state processes as they apply to direct Federal development are likely to include the following components:

—a designated single point of contact;
—delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—procedures to coordinate and manage the review and comment on direct federal development, and to aid in reaching a state process recommendation, and;
—a means of consulting with local officials.

Each Federal agency will list or describe in the **Federal Register** those of its programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects those Federal programs and activities to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

For any proposed action under a selected program or activity, the state may prepare and transmit a state process recommendation through the single point of contact; forward the views of commenting officials and entities without a recommendation; or

not subject the proposed action to state process procedures.

For proposed actions under programs or activities not selected by the State, the Federal agency provides notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, an official or organization designated by the state government, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact initiates such a response by transmitting a state process recommendation on the proposed action to the proposing Federal agency. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one signle point of contact in each state. Other functions of single point of contact include: submitting for Federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a Federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal government for the single point of contact, although a state could choose to broaden that role.

The single point of contact need not submit for federal agency consideration those views sent to it by commenting officials and entities regarding proposed actions unless there is a state process recommendation. When there is not, commenting officials and entities can submit their views directly to the Federal agency.

A state need not designate a single point of contact. However, if a state fails to do so, no other entity or official can transmit recommendations and be assured an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process, and is transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section by Section Analysis

In making changes from the NPRM to this final rule, the Agency altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule	Final rule
Section:	Section:
.1501	.1501.
.1502	.1502.
.1503(a)	.1503.
(b)	.1507(a).
.1504	.1505(a) through .1510.
.1505(a)	.1506(b).
(b)	(d).
(c)	(c).
.1506(a)	.1508(b).
(b)	.1507(a).
(c)	.1508(a).
(d)	Deleted.
(e)	.1509.
.1507(a)	.1510(e).
(b)	(b), (c).
.1508	.1511.
.1509	.1512.
.1510	.1513.

Portions of the final rule not listed in this chart (§§ 1204.1505, 1204.1506(a), 1204.1507(b), and 1204.1508(c)) are new.

Section 1204.1501 Purpose.

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. The text of section 401 is printed in the Department of Agriculture's Final Rule published elsewhere in this issue (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibility under that statute. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cities not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act (ICA). Other provisions in these regulations carry out the responsibilities under these statutory provisions.

Section 401 requires Federal actions to be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Agency will carry out its responsibilities under this section.

A few commenters suggested deleting the provision in paragraph (c) of this section that these regulations are not intended to create any right of judicial review. However, the rule retains the provision. The purpose of the Executive Order and these regulations is to foster improved cooperation between the Agency and other Federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under section 401 of ICA, and agency actions may be judicially reviewable under that statute. By retaining paragraph (c) in the regulation, the Agency is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statute.

Section 1204.1502 Definitions.

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined, specifically: Environmental Impact Statement; Unusual Circumstances; Direct Federal Development; Emergency; Accommodate; State Process Recommendation.

"Environmental Impact Statement" and "Unusual Circumstances" are not used in the regulation.

"Direct Federal Development" is not defined, since the Notice describing program inclusions to be issued pursuant to this rulemaking will provide adequate operational information upon which state and local elected officials can act.

"Emergency" is used only in its usual and customary sense and requires no further definition or delimitation.

"Accommodate" is adequately covered in the Introduction to the Rules, above, and in section 1204.1510.

"State process recommendation" also is explained adequately in the discussion of "Accommodate of Explain" in the Introduction to the Rules, above, and in subsequent sections of this preamble.

Section 1204.1503 Programs and Activities Subject to These Regulations.

This section is substantively very similar to paragraph 3(a) of the NPRM. A number of commenters viewed it as being contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, seeing the elected officials participating through the state process as the only proper parties to decide what should be excluded from review under the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion. Comments addressed specifically to NASA did not object to this Agency's approach.

The Order is limited, with respect to NASA, to direct federal development programs and activities. As a performer of and contractor for research and development, most NASA programs which affect state and local governments will involve those governments early in the planning process and will keep them involved through program implementation, as required by the National Aeronautics and Space Act, as amended. These regulations apply to those few additional activities—usually in facilities and installation planning, construction and operation—in which potentially affected government officials may not be involved "from the start."

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Agency believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Agency has reviewed the criteria proposed in January. These criteria and particular exclusions are discussed in more detail in that section near the end of this preamble which covers scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Agency is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Agency will seek public comment on proposed future program or activity exclusions if and as they occur.

Section 1204.1504 [Reserved]

This has been deleted as duplicating material in Section 1204.1506 through 1204.1510.

Section 1204.1505 Federal Interagency Coordination.

Some commenters, including those suggesting a federal single point of contact, asked the Agency and other federal agencies to do more to ensure that federal agencies communicate not only with state and local elected officials but also with each other. Some programs and projects require information or approvals from two or more federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. For policy management purposes, in this Agency, the two are organizationally interwoven. The Agency's basic authorization, the National Aeronautics and Space Act, as amended, requires such coordination in all NASA activities. Nevertheless, the Agency is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. It provides that the Administrator, to the extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure adequate coordination between such agencies and this Agency regarding programs and activities covered under these regulations.

Section 1204.1506 Procedures for Selecting Programs and Activities under these Regulations.

Paragraph (a) of this section is new. It makes clear that any type of activity described in the **Federal Register** notice prescribed by section 1204.1503 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the state's obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. Further administrative requirements would be burdensome. The Order is not so rigid as to require a sign-off by an official of each local jurisdiction in a state before its process is valid.

There were no comments objecting to the substance of paragraphs (b), (c), and (d) of this section in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in this selection of programs for the state process. The paragraph also allows the Agency to establish deadlines for states to inform the Administrator of changes in program selections. A primary reason for this provision is to assure prompt decision making on projects at times when the Agency is under other legal deadlines, such as the end of the fiscal year. In addition, editorial changes have been made for clarity.

Section 1204.1507 Communicating with State and Local Officials Concerning the Agency's Programs and Activities.

Paragraph (a) incorporates material from §§ 1204.1503(b) and 1204.1506(b) of the NPRM, except that the final regulation specifies that the Administrator's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity.

that the Administrator will communicate.

The notice provided for by this section is not necessarily exclusive. The National Aeronautics and Space Act, as amended, establishes certain coordination requirements, which apply even if a program is not selected for a state process under these regulations. This was explained earlier in this preamble in relation to Section 3 of the Rule. The Agency may take initiative at any time to contact any interested person or entity about any of the Agency's programs or activities, and need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Agency notifies the state in accordance with its process, with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact would be the information channel for this purpose. The Agency need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Agency communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Agency will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed direct Federal development. This notice may be either through publication (e.g., a notice in a publication widely available in the area potentially affected by the proposed action) or direct (e.g., a letter to the mayor of an affected city. The notice will alert the directly affected entities concerning the proposed action and identifying who in the Agency should be contacted for more information.

Section 1204.1508 Time Limitations for Receiving Comments on Proposed Direct Federal Development.

The NPRM proposed that, except in unusual circumstances, the Administrator would give states at least 30 days to comment on any proposed direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state might need to be resolved. Commenters requested a number of longer comment periods, ranging up to 60 days.

In response to these comments, the Agency has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

Paragraph (b) of this section is derived from § 1204.1506(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Agency have been delegated by the state. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

The Administrator will establish, by notice to the single point of contact or to directly affected entities, a date from which the 60 day comment period will begin. Because paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Section 1204.1509 Receiving and Responding to Comments.

This replaces § 1204.1506(e) of the NPRM, concerning the receipt of and response to comments.

About a quarter of all comments received through other Agencies discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In both reasonings, the view was that a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials and regional and areawide entities.

Consistent with the amended Executive Order and the Agency's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Agency has made substantial changes to this paragraph.

However, the concept of the single point of contact is being retained. The various local jurisidictions and all state and local agencies within each state are the creations of that state. We do not believe that it is fair to them—or appropriate for us—to have this Agency in the position of serving as an arbiter among the differing views of these non-Federal activities.

From our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It is secondary to the Agency whether this single point of contact also has a substantive role in preparing comments, or whether the state provides some other means for coordinating its views internally. This is up to the state and local elected officials who establish each state process. The Agency is most concerned that the single point of contact communicate those comments and recommendations to the Agency.

Paragraph (a) obligates the Administrator to follow the "accommodate or explain" procedures of § 1204.1510 if two conditions are met. First, the state must have designated a single point of contact, Second, the single point of contact must have transmitted a state process recommendation. If these conditions are not met, the Administrator will consider all comments received, but the "accommodate or explain" obligation will not apply.

The Agency's ability to "accommodate or explain" will be greatly aided when a single, unified state position is presented for response.

The Agency will respond as provided in § 1204.1510 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Agency under these rules. Because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are that comments which differ from the state process recommendation on a particular activity

will be seen and considered by the Agency.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities where there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Agency before the review and comment period ends. These entities may also choose to send their comments directly to the Agency concurrent with their sending them to the state process to ensure that their comments are considered in a timely manner.

Paragraph (b)(2) obligates the single point of contact to transmit to the Agency all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Agency considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the agency provides for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Agency. The Agency is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Agency.

Paragraph (e) simply reiterates the Agency's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, where they are transmitted through a single point of contact or otherwise provided to the Agency. This obligation derives directly from section 401.

Section 1204.1510 Efforts to Accommodate Intergovernmental Concerns

Paragraph (a) of this section now provides that if the operation of a state process results in a "state process recommendation" to the Agency through a single point of contact, the Agency will be obligated to accommodate or explain. On the other hand, it means that the Agency is not bound to "accommodate or explain" comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through the single point of contact. The Agency will however, consider all comments. For a discussion of "accommodate or explain" see that topic under the Introduction to the Rules, above.

In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be provided in writing. As under the proposed rule, the Agency will not implement a nonaccommodation decision within ten days after the single point of contact receives the explanation. A few commenters to other Agencies suggested that this waiting period should be longer. The Agency believes that ten days will be adequate time for the state process participants to formulate an appropriate political response if the issue is sufficiently important to them.

A new paragraph (c) in the regulation clarifies when the ten-day waiting period begins to run. If the Agency has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the agency sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent. In effect, the Agency will be free to begin carrying out its decision on the sixteenth day after the day the Agency sent the letter.

Some commenters to other Agencies indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. This was not raised as an issue directly with this Agency. In providing explanations of nonaccommodation, the Agency will continue its practice of making efforts to be as responsive as practicable consistent with the Agency's responsibilities to accomplish national program objectives and to use its resources prudently and effectively.

Section 1204.1511 Coordination in Interstate Situations.

This Section is based on § 1204.1508 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases (see § 1204.1508 of the final rule).

Other Agencies received comments on their handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them. NASA received no comments on these issues directly, and does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Agency's interest to have affected states mutually agree on those Agency programs and projects having interstate effects. On a case-by-case basis, as appropriate, the Agency will work with officials of the states involved in any interstate situation in an attempt to secure this agreement.

Designated areawide agencies in interstate metropolitan areas already have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Agency will make efforts to notify in interstate situations, relying on OMB to provide, periodically, a current list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Agency if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

Section 1204.1512 [Reserved]

Section 1204.1513 Waiver.

This provision is unchanged from the NPRM, although the section number is changed. A few commenters to other agencies objected to such waiver provisions. However, the waiver provision will be used only in those rare instances where an emergency situation makes it advisable for the Agency to take prompt action before the procedures in these regulations can be fully implemented. If and when the Agency uses the emergency waiver provision, the Agency will attempt, to the extent feasible and meaningful, to

inform the state process and other affected officials, and to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Agency will keep a record of each situation in which the waiver is used.

Other Comments

The Office of Management and Budget (OMB) will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised us, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. The officials of this Agency are responsible to the Administrator who in turn is responsible to the President for carrying out important Administration policy in consonance with the laws governing this Agency's operations.

A number of commenters reminded other agencies that existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc., should also be followed. This Agency will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent feasible, the Agency will work with states to integrate handling of such crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Agency will continue to meet all legal requirements in these areas. Administrative procedures will change. Under the A-95 system, clearinghouses coordinated responses to this Agency relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. This Agency could also continue any arrangements or relationships with whatever entities will continue to exist in the state, in order to facilitate this review and comment.

Scope

The consultation process established by these regulations is not the only, nor is it necessarily the most timely and significant, process for the coordination of proposed NASA activities with potentially affected state and local governments. Coordination and consultation are required by authorities other than the Order and Section 401. These authorities include:

(1) The National Aeronautics and Space Act of 1958, as amended (especially sections 203(b) (5), (6), and (8).

(2) The National Environmental Policy Act of 1969.

(3) Section 106 of the National Historic Preservation Act of 1968 (16 U.S.C. 470(f)).

(4) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.).

(5) Executive Order 11988, Floodplain Management.

(6) Executive Order 11990, Wetlands.

(7) The Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

(8) The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

(9) The Wild and Scenic Rivers Act (16 U.S.C. 1274 et seq.).

Few instances can be expected when the research and development programs of this Agency will directly affect a State or locality without that State or locality being a full partner in this activity, including its advanced planning. When the activity is joint or cooperative between this Agency and a state or local entity, direct coordination under the Space Act will go far beyond the provisions of these regulations in assuring mutual agreement. "Research and development" activities, including technology transfer, can be expected to fit this pattern. So would the cooperative development and/or operation of utility or municipal facilities to serve both a NASA installation and adjacent state or local jurisdictions (for instance, the refuse-fired congeneration plant serving NASA's Langley Research Center and the City of Hampton, Virginia).

Construction, maintenance, operation and management of the Agency's facilities and institutions make up the programs which are most likely to include activities which will have effects calling for consultation under the Order and these regulations. The most likely effects to occur in these programs are new or expanded buildings or utility systems or revised site or operating plans at NASA Field Centers which change the way in which the Centers interconnect with or place demands on the supporting public infrastructure around them. Examples might include relocating a Center's roadway entrance, adding building space to accommodate a significant new work force, or increasing water use or sewage output of the Center. These activities cannot be identified meaningfully by program title, since the programs under which they are funded (1) include far more activities which are not subject to coordination under the Order, (2) are reauthorized each year and subject to retitling in the process, and (3) warrant coordination on a technically-based work schedule rather than on one which is administratively keyed (for example, when the Preliminary Engineering Report is available). This schedule may be well in advance of the decision as to how the activity will be packaged programmatically, and therefore in advance of the date on which consultation would be identified as a requirement if the Agency were to follow the Order literally rather than in intent. Programs and activities of this type have been coordinated in this way through the circular A-95 process in the past, and the only comment received by the Agency relative to the way this Agency has used that process was strongly favorable. Several commenters objected to the seeming degree of discretion being reserved by the Agency in selecting activities for consultation, based on Appendix 1 to the NPRM. Most of these commenters were from areas geographically remote from our Field Center activities, and had no practical experience with the extent to which the Agency's discretion is sharply limited by the high visibility of Field Center activities in their "host" communities. The activities define themselves as being covered for all practical purposes.

Accordingly, the Agency is not in a position to publish a "list of programs and activities" open to consultation under the Order. It will restate Appendix 1 of the NPRM, in a **Federal Register** Notice, in a positive assertion of our intent to hold open to such consultation any Agency proposed activity that would have the effects which would bring it within the Order. The Agency will use the State single point of contact for consultation in any State which notifies OMB or NASA that it wishes the Agency to do so "for all such proposed activities in that state."

Furthermore, to the extent that a State can assure the Agency that the use of its State process will satisfy the legal coordination requirements of any or all of the several environmental, conservation and preservation authorities, the Agency is willing to use that State process for coordination of the appropriate activities.

Independent of the procedures established by these regulations, any State or local official may obtain information on NASA programs and activities as they relate to State and

local governments, may register an expression of interest or concern relative to these activities, by writing Paul R. Brockman, Chief, Intergovernmental Affairs Office, Technology Utilization and Industry Affairs Division, National Aeronautics and Space Administration, Washington, D.C. 20546, Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act.

The Agency has determined that this in not a major rule under Executive Order 12292. It is unlikely that its economic impact will be significant. Consequently, the Agency certifies, under the Regulatory Flexibility Act, that this rule will not have a substantial economic impact on a significant number of small entities. The rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 14 CFR Part 1204

Intergovernmental relations, Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, and Government procurement.

Final Rule

1. For the reasons set out in the Preamble, the National Aeronautics and Space Administration revises 14 CFR Part 1204, Subpart 1204.15 to read as follows:

Subpart 1204.15—Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities

Sec.

Authority.—Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

§ 1204.1501 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the agency or its officers.

§ 1204.1502 Definitions.

"Agency" means the U.S. National Aeronautics and Space Administration.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Administrator" means the Administrator of the U.S. National Aeronautics and Space Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1204.1503 Programs and activities subject to these regulations.

The Administrator publishes in the Federal Register a description of the Agency's programs and activities that are subject to these regulations.

§ 1204.1504 [Reserved]

§ 1204.1505 Federal interagency coordination.

The Administrator to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Agency regarding programs and activities covered under these regulations.

§ 1204.1506 Procedures for selecting programs and activities under these regulations.

(a) A state may select any program or activity published in the Federal Register in accordance with § 1204.1503 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials

(b) Each state that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Administrator an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 1204.1507 Communicating with State and local officials concerning the agency's programs and activities.

(a) For those programs and activities covered by a state process under § 1204.1506 the Administrator, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and;

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice to directly affected state, areawide, regional, and local entities in a state of proposed direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The development involves a program or activity not selected for the state process.

This notice may be made by publication in a periodical of general circulation in the area likely to be affected or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1204.1508 Time limitations for receiving comments on direct Federal development.

(a) Except in unusual circumstances, the Administrator gives state processes or state, areawide, regional and local officials and entities at least 60 days from the date established by the

Administrator to comment on proposed direct Federal development.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency has been delegated.

§ 1204.1509 Receiving and responding to comments.

(a) The Administrator follows the procedures in § 1204.1510 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 1204.1506.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officals and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of § 1204.1510 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 1204.1510 of this part, when such comments are provided by a single point of contact, or directly to the Agency by a commenting party.

§ 1204.1510 Efforts to accommodate intergovernmental concerns.

(a) If a state provides a state process recommendation to the Agency through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutally agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of its decision, in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for a least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 1204.1511 Coordination in interstate situations.

(a) The Administrator is responsible for—

(1) Identifying proposed direct Federal development that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Agency's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 1204.1510 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 1204.1510 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 1204.1512 [Reserved]

§ 1204.1513 Waivers of provisions of these regulations.

In an emergency, the Administrator may waive any provision of these regulations.

James M. Beggs,

Administrator.

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federal register

Friday
June 24, 1983

Part XXII

National Endowment for the Arts

Intergovernmental Review of National Endowment for the Arts Programs and Activities; Final Rule and
Listing of Programs and Activities; Notice

NATIONAL ENDOWMENT FOR THE ARTS

45 CFR Part 1152

Intergovernmental Review of National Endowment for the Arts Programs and Activities

AGENCY: National Endowment for the Arts.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs and activities of the National Endowment for the Arts. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under the Office of Management and Budget (OBM) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

DATES: Effective date: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mandell, General Counsel (202) 682-5418.

SUPPLEMENTARY INFORMATION: On January 24, 1983, (48 FR 3248), the National Endowment for the Arts along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs bringing to 28 the total number of proposals subject to public comment. The Endowment in conjunction with the 27 other federal Agencies, and OMB published a notice in the **Federal Register** on April 21, 1983, (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to the comments.

Including comments received by OMB and other federal agencies which were incorporated in the Endowment's rulemaking docket, the Endowment received approximately 160 comments on government-wide issues during the initial comment period. In addition, the Endowment received seven comments specifically related to the inclusion or exclusion of the Endowment's programs from the coverage of the Order or other issues pertaining only to the Endowment.

In preparing this final rule, the Endowment considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Endowment has made several changes from the proposed rule. The Endowment is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Endowment's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views; or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the State process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state in not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and,
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order.

After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperative Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Endowment has altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule.

Proposed rule (section)	Final rule (section)
1152.1	1152.1.
1152.2	1152.2.
1152.3(a)	1152.3.
1152.3(b) (reserved)	1152.7(a) (reserved).
1152.4	1152.4.
1152.5(a)	1152.6(b).
1152.5(b)	1152.6(d).
1152.5(c)	1152.6(c).
1152.6(a)	1152.8(c).
1152.6(b)	1152.8(a).
1152.6(c)	1152.7(a) (reserved). 1152.8(b).
1152.6(d)	1152.9.
1152.6(e) (reserved)	
1152.7(a)	1152.10(a).
1152.7(b)	1152.10(b), (c).
1152.8	1152.11.
1152.9	1152.12.
1152.10	1152.13.

Portions of the final rule not listed in this table (§§ 1152.5, 1152.6(a) and 1152.7(b)) are new.

Section 1152.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements.

The text of section 401 is printed in the Department of Agriculture final rule published elsewhere in this issue (see supplementary information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Endowment's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Endowment, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Endowment and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal,

state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Endowment is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 1152.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Endowment does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act and discussed in numerous court decisions. This term is not used in the regulation. In any event, the Endowment would not use the term in any but its commonly understood sense.

The Endowment chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of state plans and programs inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Endowment also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the danger of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain reqirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Endowment expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt through a definition to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Endowment also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 1152.10. In this section, the Chairman accepts the state process recommendations or reaches a mutually agreeable solution. If the Endowment does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Endowment believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Endowment considered whether to include a definition of the term "state process recommendation." The Endowment concluded that a definition of this term would not materially help clarify those situations in which the Endowment has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 1152.3 What programs and activities of the Endowment are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of NPRM. A substantial number of commenters contended that it was contrary to the intent of the order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for one directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursements precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Endowment believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. However, in response to comments, the Endowment has reviewed the criteria for exclusion as well as the particular exclusions it proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Endowment is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Endowment will seek public comment on proposed future program or activity exclusions as these occur.

Section 1152.4 What are the Chairman's general responsibilities under the order?

There were no substantive comments about this section which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 1152.5 What is the Chairman's obligation with respect to federal interagency consultation?

Some comments, including those suggesting a federal single point of contact, asked the Endownment and other Federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Endowment believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important in many cases, as intergovernmental communication. Consequently, the Endowment is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernment Cooperation Act. The section provides that the Chairman to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Endowment regarding programs and activities covered under these regulations.

Section 1152.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 1152.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected program and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g. a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Endowment believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Endowment does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraph (a), (c) and (b), respectively, of § 1152.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Chairman with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Endowment to establish deadlines for states to inform the Chairman of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make on short notice midstream changes in coordination procedures. In addition, the Endowment has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) § 1152.7, discussed below.

Section 1152.7 How does the Chairman communicate with state and local officials concerning the Endowment's programs and activities?

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Endowment must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Endowment may also take the initiative at any time to contact any interested person or entity about one of the Endowment's programs or activities. Further, the Endowment need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Endowment notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Endowment need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to the concerns expressed by commenters on how the Endowment communicates with local elected officals in situations where a state does not have a state process or where the state process does not choose to cover a particular program or activity.

The Endowment will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by proposed Federal financial assistance. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed Federal action) or directly (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in the Endowment should be contacted for more information.

Section 1152.8 How does the Chairman provide states with an opportunity to comment on proposed Federal financial assistance?

More commenters—over a third of the total—addressed § 1152.6(b) of the NPRM (redesignated § 1152.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Chairman would give states at least 30 days to comment on any proposed federal financial assistance. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Endowment has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Chairman will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. Where a program or activity is not selected for the state process, the Endowment will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraph's (a) and (b) now provide that the Chairman will establish this starting date, the language of the NPRM permitting the Chairman to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Chairman will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application.

Paragraph (b) of this section is derived from § 1152.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Endowment have been delegated. This paragraph is intended to make clear that when the responsibility is delegated these procedures apply just as if the matter were handled at the state level.

Paragraph (d) of § 1152.6 of the NPRM has been dropped. A new § 1152.9 of the final rule describes how the Chairman receives and responds to comments.

Section 1152.9 How does the Chairman receive and respond to comments?

This new section replaces § 1152.6(d) of the NPRM and elaborates in greater detail the Chairman's obligations concerning the receipt of and response to comments. Section 1152.6(d) had provided that the Chairman would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and all federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Endowment's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Endowment has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, then a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed Federal actions. It does not matter to the Endowment whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Endowment is concerned only that the single point of contact communicate those comments and recommendations to the Endowment.

Paragraph (a) obligates the Chairman to follow the "accommodate or explain" procedures of § 1152.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted state process recommendation. If these conditions are not met, the Chairman will still consider all comments received, but the "accommodate or explain" obligation does not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Endowment will always fully consider all comments it receives under these regulations.

The Endowment's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Endowment's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30 day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Endowment will respond as provided in § 1152.10 to state process recommendation which does not represent censensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendations on a

particular program or project will be seen and considered by the Endowment.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Endowment before the review and comment period ends. These entities may also choose to send their comments directly to the Endowment concurrent with their sending them to the state process to ensure that their comments are being considered in a timely manner.

Paragraph (b)(2) obligates the single point of contact to transmit to the Endowment all comments received concerning a selected program or activity that differs from the state process recommendation. This requirement will ensure that, as section 401 specify, the Endowment considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of the concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraph (c) and (d), the Endowment makes provision for responding to comments in situations where there is no state process or for programs that are not selected for state process. Paragraph (c) provides that, in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Endowment. The Endowment is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Endowment.

Paragraph (e) simply reiterates the Endowment's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Endowment. This obligation derives directly from section 401.

A number of commenters suggested that the Endowment and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies should tell applicants about the requirements of each state process, that comments from the state process should be sent to the applicant before the application is forwarded and that the applicant should attach these to the application, that the state process should be able to require a "notice of intent," that federal agencies should not act on an application before receiving comments from the state process, that federal agencies should require applicants to submit materials requested by the state process, and the federal agencies should have applicants themselves contact interested local parties.

Although, the Endowment recognizes a responsibility to work with its applicants so this new intergovernmental consultation system functions smoothly, the Endowment does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Endowment believes that each state process should establish the "paper flow" mechanism best suited to its situation. Where the state process decides to send comments to the applicant, the Endowment will expect the applicants to forward those comments with its application to the Endowment. However, this does not obviate the necessity for transmitting the state process recommendation to the Endowment through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Endowment.

Section 1152.10 How does the Chairman make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Endowment through a single point of contact, the Endowment becomes obligated to accommodate or explain. This means that the Endowment need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendations, or (2) are not provided through a single point of contact. The Endowment will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Endowment may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Endowment will always send a written explantion of the nonaccommodation.

As under the proposed rule, the Endowment will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Endowment believes that to avoid unduly delaying the award of federal financial assistance a longer period should not be provided. The Endowment believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Endowment has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Endowment has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Endowment sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Secruity Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Endowment will be free to begin carrying out its decision on the sixteenth day after the day the Endowment sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Endowment will make an effort to be as responsive as practicable consistent with the Endowment's responsibilities to accomplish program objectives and to

expend funds in a sound financial manner.

Section 1152.11 What are the Chairman's obligation in interstate situations?

The section is based on § 1152.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

The Endowment received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Endowment does not believe that it is necessary to change the proposed regulation to provide any procedural mechanism for resolving interstate conflicts. It is clearly in the Endowment's interest to have affected states mutually agree on the Endowment's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Endowment will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Endowment believes that designated areawide agencies in interstate metropolitan areas do have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Endowment will make efforts to notify in interstate situations. OMB will periodically provide the Endowment with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Endowment if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments is delegated a specific review role and makes a recommendation on a proposed action by the Endowment, and that recommendation is transmitted to the Endowment through the single point of contact of either Maryland, Virginia or the District of Columbia, the Endowment is obligated to accommodate or explain. If a state process recommendation differing from Washington COG recommendation is also transmitted by another state's single point of contact, the Endowment would also accommodate or explain that recommendation as well.

Section 1152.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Endowment did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order, that federal agencies allow the consolidation of state plans, the Endowment had little discretion in developing this provision. In addition, the Endowment has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Endowment believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Endowment will work with states to resolve problems that could impede approval.

A few commenters recommended there be a Federal "single point of contact" for state plan or other purposes. The Endowment believes this idea would not work, because of differing agency responsibilities under the wide variety of programs statutes that various Federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Endowment and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intended to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe states should be free to develop their own formats to reflect their own situations. Consequently, the Endowment will not develop model formats, since formats that are developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated or substituted for, appears elsewhere in todays Federal Register and will be periodically updated.

Section 1152.13 May the Chairman waive any provisions of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Endowment is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances in which an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Endowment uses the emergency waiver provision, the Endowment will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Endowment will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there were several other comments made to the Endowment to which the Endowment would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Endowment wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Endowment's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Endowment are responsible to the Chairman who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Endowment and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Endowment will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Endowment will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Endowment will continue to meet all legal requirements in these areas.

Scope

The Endowment's proposed programs for exclusion were determined by: (1) Applying the criteria used by all agencies in identifying the scope of the Executive Order published in the **Federal Register**, Vol. 48, page 3125 (specifically the "generic" exclusion providing for direct payments to individuals and the "class" exclusion providing for direct financial assistance between the federal government and non-governmental entities) and (2) comparing the programs proposed for exclusion under the Executive Order to the Endowment's programs excluded from coverage within the A-95 review network. The Endowment reviewed its listing of proposed programs for exclusion after the scope of the Executive Order was expanded by the amendment to the Executive Order and after it considered all comments regarding the Endowment's proposed exclusions from the final rule.

All commenters who specifically addressed the Endowment's programs agreed either wholly or partially with the Endowment's proposed programs for exclusion. Some commenters requested that the Endowment modify its proposed exclusions and delete from the exclusions all research and demonstration activities and the Expansion Arts, Inter-Arts, and Challenge programs. The commenters stated that research and demonstration activities and projects funded through the Expansion Arts, Inter-Arts, and Challenge programs should be included in the review process proposed under the Executive Order because these projects: (1) May create unanticipated additional demand on local and state resources for matching and/or continuation purposes and/or (2) the federal funds provided may duplicate state provided funds and/or (3) the federal funding may per-exempt state funding plans.

The Endowment's legislation provides generally that Endowment funds will not pay more than 50 percent of the project cost of the grants to generally non-profit organizations for research and demonstration activities as well as the activities funded through the Expansion Arts program and the other programs proposed for exclusion. The Challenge program requires that Endowment funds will be matched by a minimun of 3 times the federal funds. The Endowment's organizational grantees have consistently exceeded the matching provisions and in many instances the recipients of Challenge grants have used the mandated matching requirements as one of the themes of their fund-raising compaigns.

The requirement for matching funds for the Endowment's grants is viewed by the Endowment as essential to the financial health of its constituency and the matching requirements guarantee that the applicants must subject their funding and project plans for review to many funding sources before the matching funds are secured. Accordingly, the Endowment does not consider the matching provision of the grants as a justification for requiring another level of review as contemplated by the commenters by including these programs within the scope of the Executive Order.

The application procedures in place for all of the programs on the list of programs proposed for exclusion require applicants to identify sources of matching funds. Additionally, many of the programs including Expansion Arts require as a pre-requisite to applying for Endowment grants that the applicants have credible track records and, generally, the Endowment does not provide start-up funds. Challenge applicants must submit long-term financial plans which are reviewed with the applicants and key members of the area to receive the benefits of the challenge grants. All applications are subjected to the Endowment's review procedures that rely heavily on review by representatives from both the public and private sector. The Endowment accordingly believes that these eligibility requirements and application review procedures minimize the risk that its grants may create unexpected additional demands on state and/or local resources.

Therefore, the Endowment believes that additional review, as requested by the commenters, of applications for funds for research and demonstration activities, expansion arts, inter-arts, and challenge projects will not improve the quality of the projects or enhance the impact of such projects on the communities served, but may tend to frustrate the applicants and to lengthen the time required from application preparation to the start of the project. Accordingly, the Endowment's proposed listing of exclusions remains unchanged from the attachment to the NPRM.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Endowment has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Endowment and allow state and local governments to establish cost effective consultation procedures. For this reason, the Endowment believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Endowment certifies, under the Regulatory Flexibility Act, that this rule would not have significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 1152

Intergovernmental relations.

Issued at Washington, D.C. June 17, 1983.

F. S. M. Hodsoll,

Chairman.

For the reasons set out in the Preamble, the National Endowment for the Arts amends Title 45, Code of Federal Regulations, by adding a new Part 1152, to read as follows:

1. Part 1152 is revised to read as follows:

PART 1152—INTERGOVERNMENTAL REVIEW OF NATIONAL ENDOWMENT FOR THE ARTS PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506)

§ 1152.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) these regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct Federal development.

(c) These regulations are intended to improve the internal management of the Endowment, and are not intended to create any right or benefit enforceable at law by a party against the Endowment or its officers.

§ 1152.2 What definitions apply to these regulations?

"Endowment" means the National Endowment for the Arts.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Chairman" means the Chairman of the National Endowment for the Arts or an official or employee of the Endowment acting for the Chairman under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1152.3 What programs and activities of the Endowment are subject to these regulations?

The Chairman publishes in the **Federal Register** a list of the Endowment's programs and activities that are subject to these regulations.

§ 1152.4 What are the Chairman's general responsibilities under the Order?

(a) The Chairman provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from the Endowment.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance the Chairman, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance that is communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 1152.5 What is the Chairman's obligation with respect to federal interagency coordination?

The Chairman to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Endowment regarding programs and activities covered under these regulations.

§ 1152.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal**

Register in accordance with § 1152.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Chairman of the Endowment's programs and activities selected for that process.

(c) A state may notify the Chairman of changes in its selections at any time. For each change, the state shall submit to the Chairman an assurance that the state has consulted with elected local officials regarding the change. The Endowment may establish deadlines by which states are required to inform the Chairman of changes in their program selections.

(d) The Chairman uses a state's process as soon as feasible, depending on individual programs and activities, after the Chairman is notified of its selections.

§ 1152.7 How does the Chairman communicate with state and local officials concerning the Endowment's programs and activities?

(a) [Reserved]

(b) The Chairman provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance if—

(1) The state has not adopted a process under the Order; or

(2) The assistance or development is under program or activity not selected for the state process.

This notice is made by the publication in the Federal Register or other appropriate means which the Endowment in its discretion deems appropriate.

§ 1152.8 How does the Chairman provide states with an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstance, the Chairman gives state processes or directly affected state, areawide, regional and local officials and entities—

(1) [Reserved]

(2) At least 60 days from the date established by the Chairman to comment on proposed federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Endowment have been delegated.

§ 1152.9 How does the Chairman receive and respond to comments?

(a) The Chairman follows the procedures in § 1152.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 1152.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Endowment.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Endowment. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Endowment by the single point of contact, the Chairman follows the procedure of § 1152.10 of this part.

(e) The Chairman considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Chairman is not required to apply the procedures of § 1152.10 of this part, when such comments are provided by a single point of contact or directly to the Endowment by a commenting party.

§ 1152.10 How does the Chairman make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Endowment through its single point of contact, the Chairman either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Chairman in his or her discretion deems appropriate. The Chairman may supplement the written explanation by also providing the explanation to the single point of contact by telephone other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section the Chairman informs the single point of contact that:

(1) The Endowment will not implement its decision for ten days after the single point of contact receives the explanation; or

(2) The Chairman has reviewed the decision and determined that, because of unusual circumstances, the ten-day waiting period is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 1152.11 What are the Chairman's obligations in interstate situations?

(a) The Chairman is responsible for:

(1) Identifying proposed federal financial assistance that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Endowment's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Endowment's program or activity;

(4) Responding pursuant to § 1152.10 of this part if the Chairman receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Endowment have been delegated.

(b) The Chairman uses the procedures in § 1152.10 if a state process provides a state process recommendation to the Endowment through a single point of contact.

§ 1152.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Chairman.

(c) The Chairman reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if it meets federal requirements.

§ 1152.13 May the Chairman waive any provision of these regulations?

In an emergency, the Chairman may waive any provision of these regulations.

[FR Doc. 83-16978 Filed 6-23-83; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL ENDOWMENT FOR THE ARTS

Listing of Programs and Activities

Pursuant to Section 1 of the Executive Order 12372, July 14, 1982, as amended on April 8, 1983, notice is hereby given that the following listing of programs/activities of the National Endowment for the Arts are subject to the Order and Part 1152 of Title 45 of the Code of Federal Regulations.

Promotion of the Arts

State Programs/Office for Public Partnership (Basic State Grants)
Artists-In-Education
Test Program of Support for Local Arts Agencies

Further information with reference to the above program/activities and the Order can be obtained from Mr. Jeffrey Mandell, General Counsel, National Endowment for the Arts, Washington, D.C. 20506 or call (202) 682-5418.

Dated: June 17, 1983.

Jeffrey Mandell,

General Counsel National Endowment for the Arts.

[FR Doc. 83-16979 Filed 6-23-83; 8:45 am]

BILLING CODE 7537-01-M

federal register

Friday
June 24, 1983

Part XXIII

National Endowment for the Humanities

Intergovernmental Review of the National Endowment for the Humanities Programs and Activities; Notice

NATIONAL ENDOWMENT FOR THE HUMANITIES

Intergovernmental Review of the National Endowment for the Humanities Programs and Activities

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: Executive Order 12372, "Intergovernmental Review of Federal Programs," and agency regulations published elsewhere in today's **Federal Register** are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) circular A–95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Endowment is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Endowment's programs are subject to the Order. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Carnes, Office of Planning and Policy Assessment, National Endowment for the Humanities, Room 402, Old Post Office Bldg., 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, (202) 786–0428.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3258) the National Endowment for the Humanities, along with 25 other Federal agencies, published either notices proposing that their programs not be subject to the Order or Notices of Proposed Rulemaking (NPRM). Subsequently, two more agencies published NPRM's bringing to 28 the total number of proposals subject to public comment. The Endowment, in conjunction with the other 27 Federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Endowment received 7 comments specifically related to the proposed exclusion of some or all of its programs and activities from coverage under the Order. The Endowment also was provided copies of selected comments received by OMB or the Federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Endowment considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and at a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to excluded any programs or activities from coverage under the Order, and that elected officials of state and local governments are the only proper parties to decided what should be excluded from the state process of intergovernmental review. Other commenters objected to the various criteria used by Federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development, and the order mandates consultation only when state and local governments provide non-Federal funds for, or are directly affected by, the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. Further, it is appropriate for Federal agencies to decided which of their activities are Federal financial assistance or direct Federal development. There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be inappropriate.

Of the 7 comments received which mention the Endowment specifically, 3 endorse the proposed exclusion of all Endowment programs from coverage under the Order. Two commenters contend that the Order mandates coverage of all programs, including particular Endowment programs or Endowment programs generally, or that the decision to review Federal programs, Endowment programs included, is a state and local prerogative; these views have been discussed above.

One commenter ask to review any proposal or plan to develop or manage any facilities which will have impact on the social, physical, or economic environment of an adjoining area through creating additional demands for schools, housing, recreation areas, tourist facilities, utility usage, public services, transportation needs, or which will require any local government or branch of State government to provide funds ro services for matching or continuation. No Endowment program falls into these categories.

A final commenter cited certain Endowment programs as programs it desires to review. However, the programs cited are no longer in operation, nor are any programs of the Endowment proposed for inclusion.

The Endowment has concluded that, currently, none of its programs or activities is covered by the Executive Order. When new programs or activities are authorized or initiated by the Endowment, the Endowment will determine whether these new programs or activities fall within the scope of the Order. If the Endowment intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register.** If the determination is made that a new or additional program should be included, the Endowment will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have their views considered by the Endowment under any consultation procedures provided for in existing or future program statutes.

Issued at Washington, D.C., June 13, 1983.

William J. Bennett,

Chairman.

[FR Doc. 83–16379 Filed 6–23–83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XXIV

National Science Foundation

Intergovernmental Review of National Science Foundation Programs and Activities; Final Rule and Programs Eligible for Inclusion Under EO 12372; Notice

NATIONAL SCIENCE FOUNDATION

45 CFR Part 660

Intergovernmental Review of the National Science Foundation Programs and Activities

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the National Science Foundation. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

DATE: Effective date: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Ruth Greenstein, Associate General Counsel, 202-357-9438.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3262), the National Science Foundation, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Foundation, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Foundation's rulemaking docket, the Foundation received approximately 160 comments on government-wide issues during the comment period. In addition, the Foundation received five comments specifically related to the inclusion or exclusion of the Foundation's programs from the coverage of the Order or other issues pertaining only to the Foundation.

In preparing the final rule, the Foundation considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Foundation has made several changes from the proposed rule. The Foundation is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983 (48 FR 15587, April 11, 1983), extending the effective date of these final regulations until September 30, 1983. The Foundation's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interest and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except circular A-95) would continue in effect, including that of the Intergovernmental Cooperation Act of 1968. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent

changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with appropriate notice of program announcements within selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an "accommodate or explain" response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. The state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed action under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Foundation altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
660.1	660.1.
660.2	660.2.
660.3(a)	660.3.
660.3(b)	660.7(a).
660.4 [Reserved]	660.4 [Reserved].
660.5(a)	660.6(b).
660.5(b)	660.6(d).
660.5(c)	660.6(c).
660.6(a)	660.8(b).
660.6(b)	660.7(a).
660.6(c)	660.8(a).
660.6(d)	Deleted.
660.6(e)	660.9.
660.7(a)	660.10(a).
660.7(b)	660.10 (b), (c).
660.8	660.11.
660.9 [Reserved]	660.12 [Reserved].
660.10	660.13.

Portions of the final rule not listed in this table (660.5, 660.6(a), 660.7(b), and 660.8(c)) are new.

Section 660.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. (The text of Sec. 401 is printed in the Department of Agriculture's Final Rule published elsewhere in this issue (see Supplemental Information section of USDA's document).)

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, the Executive Order was amended to cite section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Foundation's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Foundation, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Foundation and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and

seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Foundation is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statues.

Section 660.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Foundation does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Foundation would not use the term in any but its commonly understood sense.

The Foundation chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to draft a concise, understandable, and comprehensive definition. An abstract definition always carriers with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in both cases, the list of program inclusions accompanying this rulemaking provides adequate operational information upon which state and local elected officials can act.

The Foundation also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Foundation expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Foundation also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 660.10. In this section, the Secretary accepts the state process recommendations or reaches a mutually agreeable solution. If the Foundation does not provide an accommodation in one of these two ways, it must provide an explanation. As the Foundation believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Foundation considered whether to include a definition of the term "state process recommendation." The Foundation concluded that a definition of this term would not materially help clarify those situations in which the Foundation has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 660.3 What programs and activities of the foundation are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance that directly affects state and local governments and direct federal development programs and activities. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities), and the order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. It is appropriate for federal agencies to decide which of their activities are federal financial assistance that directly affects state and local governments, or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Foundation's budget proposals transmitted to OMB). Most research and development grants are awarded for studies unrelated to the direct responsibilities of state and local government.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Foundation believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Foundation has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Foundation is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently.

Section 660.4 [Reserved]

Section 660.5 What is the Director's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Foundation and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Foundation believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Foundation is adding

a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Director, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Foundation regarding programs and activities covered under these regulations.

Section 660.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by section 660.3 is eligible for selection by a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's Letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Foundation believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Foundation does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 660.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Director with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Foundation to establish deadlines for states to inform the Director of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Foundation has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 660.7, discussed below.

Section 660.7 How does the Director communicate with state and local officials concerning the Foundation's programs and activities?

Paragraph (a) incorporates material from §§ 660.3(b) and 660.6(b) of the NPRM, except that the final regulation specifies that the Director's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Director will communicate.

The notice provided for by this section is not necessarily exclusive. For example, some activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Foundation must pursue such notification and consultation practices under authorities even where the program or activity is selected for a state process. The Foundation may also take the initiative at any time to contact any interested person or entity about one of the Foundation's programs or activities. Further, the Foundation need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Foundation notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Foundation need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Foundation communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Foundation will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Foundation should be contacted for more information.

Section 660.8 How does the Director provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 660.6(c) of the NPRM (redesignated § 660.8(a) in the final rule) than any othe provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Director would give states at least 30 days to comment on any proposed federal financial assistance of direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Foundation has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of continuation awards which are not peer reviewed.

The comment period for these would remain at 30 days.

The Director will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Because paragraphs (a) and (b) now provide that the Director will establish this starting date, the language of the NPRM permitting the Director to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Director will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 660.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Foundation have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Foundation is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Foundation encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 660.6 of the NPRM has been dropped. A new section 660.9 of the final rule describes how the Director receives and responds to comments.

Section 660.9 How does the Director receive and respond to comments?

This new section replaces § 660.6(e) of the NPRM and elaborates in substantially greater detail the Director's obligations concerning the receipt of and response to comments. Section 660.6(e) had provided that the Director would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Foundation's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Foundation has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Foundation whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Foundation is concerned only that the single point of contact communicate those comments and recommendations to the Foundation.

Paragraph (a) obligates the Director to follow the "accommodate or explain" procedures of § 660.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Foundation.) If these conditions are not met, the Director will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Adminstration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Foundation will always fully consider all comments it receives under these regulations.

The Foundation's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Foundation's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Foundation will respond as provided in § 660.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Foundation.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Foundation before the review and comment period ends. These entities may also choose to send their comments directly to the Foundation concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Foundation all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Foundation considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Foundation makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Foundation. The Foundation is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Foundation. The Foundation deliberated whether in this rule to require applicants to transmit all comments they had received. The Foundation decided not to impose such a requirement in this rule but expects applicants to do so. The Foundation retains the option of selectively requiring an applicant to do this.

Paragraph (e) simply reiterates the Foundation's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Foundation. This obligation derives directly from section 401.

A number of commenters suggested that the Foundation and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Foundation recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Foundation does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Foundation believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Foundation will expect the applicant to forward those comments with its application to the Foundation. However, this does not obviate the necessity for transmitting the state process recommendation to the Foundation through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Foundation.

Section 660.10 How does the Director make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Foundation through a single point of contact, the Foundation becomes obligated to accommodate or explain. This means that the Foundation need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Foundation will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Foundation may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Foundation will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Foundation will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Foundation believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Foundation believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Foundation has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Foundation has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written

explanation arrives later. If the Foundation sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Foundation will be free to begin carrying out its decision on the sixteenth day after the day the Foundation sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Foundation will make an effort to be as responsive as practicable consistent with the Foundation's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 660.11 What are the Director's obligations in interstate situations?

This section is based on § 660.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except continuation awards which are not peer reviewed.

There were also several comments on handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Foundation does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Foundation's interest to have affected states mutually agree on the Foundation's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Foundation will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Foundation believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Foundation will make efforts to notify in interstate situations. OMB will periodically provide the Foundation with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Foundation if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and District of Columbia. If that Council of Governments is delegated a specific review role and makes a recommendation on a proposed action by the Foundation, and that recommendation is transmitted to the Foundation through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Foundation is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Foundation would also accommodate or explain that recommendation as well.

Section 660.12 [Reserved]

Section 660.13 May the Director waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Foundation is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provision of these regulations. If the Foundation uses the emergency waiver provision, the Foundation will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Foundation will keep records of all situations in which the emergency waiver was used.

Scope

In formulating its proposed list of included and excluded programs published as an attachment to its January 24, 1983, Notice of Proposed Rulemaking, the National Science Foundation's basic criterion was the degree to which the program was likely to affect state or local governments directly. In the Foundation's judgment, only one program (Intergovernmental Science and Technology Programs) was likely to affect state and local governments directly. As a result, all other research and academic training programs were excluded. Although the Foundation did receive several generic comments arguing that the state process, rather than the Federal agency, should make such judgments, it received no public comments specifically suggesting the inclusion of any additional programs. Since January, the Foundation has developed two new programs which it believes appropriate for inclusion. As a result, the Foundation's separate notice of inclusions lists three programs rather than one.

Although the Foundation believed projects in excluded programs would only rarely directly affect state and local governments, it did provide for inclusion if any of three criteria were met. Comments representing more than 120 public and private universities suggested that this additional provision was unnecessary and inconsistent with the treatment accorded by other federal agencies that fund scientific research. The Foundation has therefore deleted this provision. It will, however, do its best to identify projects in excluded research and academic training programs that might directly affect state and local governments and to consult with such governments about those unique projects through the state process.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Foundation has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Foundation and allow state and local governments to establish cost effective consultation procedures. For this reason, the Foundation believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently the Foundation certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial

number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 660

Intergovernmental relations.

For the reasons set out in the Preamble, the National Science Foundation amends Title 45, Code of Federal Regulations, by revising Part 660, to read as follows:

PART 660—INTERGOVERNMENTAL REVIEW OF THE NATIONAL SCIENCE FOUNDATION PROGRAMS AND ACTIVITIES

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and Section 401 of the Intergovernmental Cooperation Act of 1968 and as amended (31 U.S.C. 6506).

§ 660.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovermental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovermental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Foundation, and are not intended to create any right or benefit enforceable at law by a party against the Foundation or its officers.

§ 660.2 What definitions apply to these regulations?

"Foundation" means the National Science Foundation.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of the National Science Foundation or an official or employee of the Foundation acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 660.3 What programs and activities of the Foundation are subject to these regulations?

The Director publishes in the **Federal Register** a list of the Foundation's programs and activities that are subject to these regulations.

§ 660.4 [Reserved]

§ 660.5 What is the Director's obligation with respect to Federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Foundation regarding programs and activities covered under these regulations.

§ 660.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 660.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Foundation's programs and activities selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with elected local elected officials regarding the change. The Foundation may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs and activities, after the Director is notified of its selections.

§ 660.7 How does the Director communicate with state and local officials concerning the Foundation's programs and activities?

(a) For those programs and activities covered by a state process under § 660.6, the Director, to the extent permitted by law—

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the Foundation in its discretion deems appropriate.

§ 660.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Director to comment on proposed federal financial assistance in covered programs (i.e., those referenced in § 660.3) in the form of continuation awards that are not peer reviewed; and

(2) At least 60 days from the date established by the Director to comment on proposed direct federal development or federal financial assistance in covered programs (i.e., those referenced § 660.3) other than continuation awards that are not peer reviewed.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Foundation have been delegated.

§ 660.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 660.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 660.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Foundation.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Foundation. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Foundation by the single point of contact, the Director follows the procedures of § 660.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 660.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Foundation by a commenting party.

§ 660.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Foundation through its single point of contact, the Director either—

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Foundation will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 660.11 What are the Director's obligations in interstate situations?

(a) The Director is responsible for—

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Foundation's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Foundation's program or activity;

(4) Responding pursuant to § 660.10 of this part if the Director receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Foundation have been delegated.

(b) The Director uses the procedures in § 660.10 if a state process provides a state process recommendation to the Foundation through a single point of contact.

§ 660.12 [Reserved]

§ 660.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

Richard S. Nicholson,

Acting Director.

[FR Doc. 83-16473 Filed 6-23-83; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Programs Eligible for Inclusion Under E.O. 12372

AGENCY: National Science Foundation.

ACTION: Notice of Programs Eligible for Inclusion under E.O. 12372.

SUMMARY: Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, and Section 660.3 of the National Science Foundation's implementing regulations Published in this Part XXIV; to be codified at 45 CFR, the National Science Foundation designates the following three programs as eligible for selection by the state:

(1) Intergovernmental Science and Technology Programs (CFDA #47.036);

(2) Materials Development for Precollege Science and Mathematics; and

(3) Honors Workshops for Precollege Teachers of Science and Mathematics.

DATE: Effective September 30, 1983.

ADDRESS: Office of the General Counsel, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Ruth L. Greenstein, Associate General Counsel, 202/357-9438

SUPPLEMENTARY INFORMATION:

Richard S. Nicholson,

Acting Director.

FR Doc. 83-16325 Filed 6-23-83; 8:45]

BILLING CODE 7555-01-M

federal register

Friday
June 24, 1983

Part XXV

Office of Personnel Management

Intergovernmental Review of the Office of Personnel Mangement Programs and Activities; Notice

OFFICE OF PERSONNEL MANAGEMENT

Intergovernmental Review of the Office of Personnel Management Programs and Activities

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Executive Order 12372 (47 FR 30959, July 16, 1982), "Intergovernmental Review of Federal Programs," and agency regulations published elsewhere in today's **Federal Register** are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Office is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Office's programs are subject to the Order. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW.,— Room 6H31, Washington, D.C. 20415. Telephone (202) 632-4600.

On January 24, 1983 (48 FR 3270) the Office of Personnel Management, along with 25 other federal agencies published notices proposing that their programs not be subject to the Order or Notices of Proposed Rulemaking (NPRM). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Office, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Office received four comments specifically related to the proposed exclusion of all of its programs and activities from coverage under the Order. The Office also was provided copies of selected comments received by OMB or the federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Office considered these comments as well as testimony at public meetings held in Washington on March 2, 1983 and May 5, 1983 and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order, and that elected officials of state and local governments are the only proper parties to decide what should be excluded from the state process of intergovernmental review. Other commenters objected to the various criteria used by federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. Further, it is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate.

The Office further considers it appropriate not to propose rules for the program described in 42 U.S.C. ch. 62, Intergovernmental Personnel Programs. No funds have been appropriated for this program and the Office has no intention of seeking funds therefor in the future. Clearly, proposing rules for an inactive program would be a wasteful exercise.

Furthermore, the fact that state and local governments might remotely or indirectly benefit from activities managed by the Office is insufficient reason to engage in rulemaking under the Order, especially where no federal financial assistance or direct federal development is involved.

The Office has concluded, therefore, that none of its programs or activities is presently covered by the Executive Order. When new programs or activities are authorized or initiated by the Office, the Office will determine whether these new programs or activities fall within the scope of the Order. If the Office intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register**. If the determination is made that a new or additional program should be included, the Office will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have their views considered by the Office under any consultation procedures provided for in existing or future program statutes.

United States Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-16996 Filed 6-23-83; 8:45 am]

BILLING CODE 6325-01-M

federal register

Friday
June 24, 1983

Part XXVI

Postal Service

Intergovernmental Review of Postal Service Facility Project Actions; Final Rule

POSTAL SERVICE

39 CFR Parts 775, 776, and 778

Intergovernmental Review of Postal Service Facility Project Actions

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to facility project actions of the Postal Service. Executive Order 12372 and these regulations replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Royal Rasmussen, 202/245-4354.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3274), the Postal Service, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NRPMs, bringing to 28 the total number of proposals subject to public comment. The Postal Service, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Postal Service's rulemaking docket, the Postal Service received 28 comments on Postal Service specific and government-wide issues during the comment period. The Postal Service received 13 comments specifically related to the inclusion or exclusion of the Postal Service's facility project actions from the coverage of the Order.

In preparing the final rule, the Postal Service considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Postal Service has made several changes from the proposed rule. The Postal Service is fully committed to carrying out Executive Order 12372 and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Postal Service's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

The Postal Service is an independent establishment of the Executive Branch. It is exempt from most federal laws "dealing with public or federal contracts, property, works, officers, employees, budgets or funds," (39 U.S.C. 410) except those which have been specifically made applicable to it or which it has determined to adopt as applicable by regulation. Thus, to the extent that the Postal Service is exempt from the provisions of Title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231) and the Executive Order, the rule set out in this notice is adopted by the Postal Service pursuant to its general authority to adopt such regulations as it deems necessary to accomplish the objectives of Title 39, United States Code (39 U.S.C. 401).

Introduction to the Rule

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order, as applicable to the Postal Service, are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed direct federal development. In this context the Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not; and

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states also are to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) applicable to the Postal Service would continue in effect. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components applicable to the Postal Service:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed direct federal development, and to aid in reaching a state process recommendation; and

—A means of consulting with local officials.

Federal agencies will list those programs and activities eligible for

selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. OMB, in turn, provides the information to the federal agencies. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notices on proposed actions that have been selected by the state for review.

For any proposed action under a selected program or activity, the state has the following options: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration and comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of any accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Postal Service altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, the Postal Service is providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
778.1	778.1.
778.2	778.2.
778.3(a)	778.3.
778.3(b)	778.7(a).
778.4	778.4.
778.5(a)	778.6(b).
778.5(b)	778.6(d).
778.5(c)	778.6(c).
778.6(a)	778.8(b).
778.6(b)	778.7(a).
778.6(c)	778.8(a).
778.6(d)	Deleted.
778.6(e)	778.9.
778.7(a)	778.10(a).
778.7(b)	778.10 (b), (c).
778.8	778.11.
778.9	778.12.
778.10	778.13.

Portions of the final rule not listed in this table (§§ 778.5, 778.6(a), 778.7(b), and 778.8(c)) are new.

Section 778.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. The text of section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and Members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Postal Service's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Postal Service, when considering and making efforts to accommodate comments and recommendations it receives under those regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between

the Postal Service and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Postal Service is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

This section also briefly describes the Postal Service policy of adherence to the Order.

Section 778.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Postal Service does not believe that it is necessary to define any of these additional terms.

Section 778.3 What categories of facility project actions of the Postal Service are subject to these regulations?

This section is very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope, as applicable to the Postal Service, is limited to direct federal development facility project actions.

In response to comments, the Postal Service has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the facility project actions eligible for selection for state processes, the Postal Service is providing a listing of these "included" actions in this preamble in accordance with § 778.3.

Section 778.4 What are the Postal Service's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 778.5 What is the Postal Service's obligation with respect to federal interagency coordination?

Some commenters, including those who suggested a federal single point of contact, asked the Postal Service and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Postal Service believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Postal Service is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Postal Service, to the extent practicable, will consult with and seek advice from all other federal departments and agencies substantially affected by facility project actions covered under these regulations in an effort to assure full coordination between such agencies and the Postal Service.

Section 778.6 What procedures apply to a state's choice of facility action categories under these regulations?

Paragraph (a) of this section is new. It makes clear that any category of facility action published in accordance with § 778.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting categories of facility actions for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected categories of facility project actions.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Postal Service believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Postal Service does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (d), respectively, of § 778.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Postal Service with each change in its selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what actions are selected for the state process. The paragraph also allows the Postal Service to establish deadlines for states to inform the Postal Service of changes in selections. In addition, the Postal Service had made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular category of facility action is not selected for a state process. This question is answered in paragraph (b) of § 778.7, discussed below.

Section 778.7 How does the Postal Service communicate with state and local officials concerning the Postal Service's facility project actions?

The notice provided for by this section is not necessarily exclusive. For example, many facility actions may have independent consultation or notification requirements which apply even if an action is not selected for a state process. The Postal Service must pursue such notification and

consultation practices under these authorities even where the action is selected for a state process. The Postal Service may also take the initiative at any time to contact any interested person or entity about one of the Postal Service's facility actions. Further, the Postal Service need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Postal Service notifies the state process with respect to a proposed action concerning a category of facility action that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Postal Service need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Postal Service communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular category of facility action. The Postal Service will carry out its responsibilities in these situations by providing notice directly to state, areawide, regional or local officials or entities that would be affected by the proposed action. This notice may be either through publication (e.g., a notice in a publication widely available in the area potentially affected by the proposed federal action, i.e., local newpaper) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the affected entities concerning the proposed action and identifying who in the Postal Service should be contacted for more information.

Section 778.8 How does the Postal Service provide states an opportunity to comment on proposed facility project actions?

More commenters—over a third of the total—addressed paragraph (c) of § 778.6 of the NPRM (redesignated paragraph (a) of § 778.8 in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Postal Service would give states at least 30 days to comment on any proposed direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be availabe to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Postal Service has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to facility project actions in the Maryland or Virginia portion of the Washington, DC, National Capital Region, where the comment period would be 90 days.

The Postal Service will establish, by notice to the single point of contact or to directly affected entities, a date from which the comment period will begin to run. Because paragraphs (a) and (b) now provide that the Postal Service will establish this starting date, the language of the NPRM permitting the Postal Service to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Postal Service will ensure that commenting parties under the state process are afforded adequate time to review and comment on the project proposal.

Paragraph (b) of this section is derived from paragraph (a) of § 778.6 of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Postal Service have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Paragraph (e) of § 778.6 of the NPRM has been dropped. A new § 778.9 of the final rule describes how the Postal Service receives and responds to comments.

Section 778.9 How does the Postal Service receive and respond to comments?

This new section replaces paragraph (e) of § 778.6 of the NPRM and elaborates in substantially greater detail the Postal Service's obligations concerning the receipt of and response to comments. Paragraph (e) of § 778.6 had provided that the Postal Service would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Postal Service's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Postal Service has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channel. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Postal Service whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Postal Service is concerned only that the single point of contact communicate those comments and recommendations to the Postal Service.

Paragraph (a) obligates the Postal Service to follow the "accommodate or

explain" procedures of § 778.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. If these conditions are not met, the Postal Service will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The Postal Service's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Postal Service's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Postal Service will respond as provided in § 778.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Postal Service under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular facility project action will be seen and considered by the Postal Service.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Postal Service before the review and comment period ends. These entities may also choose to send their comments directly to the Postal Service concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Postal Service all comments received concerning a selected facility project action that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Postal Service considers all views from state, areawide, regional and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Postal Service makes provision for responding to comments in situations where there is no state process or for categories of facility actions that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service. The Postal Service is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular category of facility action of the Postal Service.

Paragraph (e) simply reiterates the Postal Service's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Postal Service. This obligation derives directly from section 401.

Section 778.10 How Does the Postal Service Make Efforts To Accommodate Intergovernmental Concerns?

Paragraph (a) of this section provides that if a state process provides a state process recommendation to the Postal Service through a single point of contact, the Postal Service becomes obligated to accommodate or explain. This means that the Postal Service need not accommodate or explain comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Postal Service will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Postal Service may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Postal Service will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Postal Service will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Postal Service believes that to avoid unduly delaying the facility action a longer period should not be provided. The Postal Service believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Postal Service has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Postal Service has made a telephone call (or other oral communcation) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Postal Service sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many legal contexts. In effect, the Postal Service will be free to begin carrying out its decision on the sixteenth day after the day the Postal Service sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These comments felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Postal Service will make an effort to be as responsive as practicable consistent with the Postal Service's responsibilities to accomplish the objectives of the action and to expend funds in a sound financial manner.

Section 778.11 What Are the Postal Service's Obligations in Interstate Situations?

This section is based on § 778.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases, except where indicated to be longer.

The Postal Service received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Postal Service does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Postal Service's interest to have affected states mutually agree on the Postal Service's projects that affect interstate situations. On a case-by-case basis, as appropriate, the Postal Service will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Postal Service believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Postal Service will make efforts to notify in interstate situations. OMB will periodically provide the Postal Service with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Postal Service if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the category of facility actions being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments (COG) has been delegated a specific review role and makes a recommendation on a proposed action by the Postal Service, and that recommendation is transmitted to the Postal Service through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Postal Service is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Postal Service would accommodate or explain that recommendation as well.

Section 778.12 [Reserved]

Section 778.13 May the Postal Service waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Postal Service is strongly committed to compliance with the Order, and will use the emergency waiver provision in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Postal Service uses the emergency waiver provision, the Postal Service will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Postal Service will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there were several other general comments. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Postal Service is committed to implement all of the provisions of the Order and these regulations, and will respond promptly to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Postal Service's obligations.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs.

Finally a number of commenters reminded the Postal Service and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Postal Service will continue to follow all applicable crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Postal Service will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Postal Service will continue to meet all applicable legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Postal Service attached to the preamble of the proposed rule a list of porposed exclusions from the scope of project actions to be covered under the regulations. The Postal Service received 13 comments pertaining to those proposed exclusions.

Almost two-thirds of the comments objected to the Postal Service proposing any exclusions on the ground that the Executive Order allows the state process, at the discretion of state and local elected officials, to exclude certain programs from review and comment and, by so doing, designate the programs for review.

Over one-third of the comments objected to the proposed exclusion of actions involving expansion, alteration, or improvement of a facility where the gross size is not increased by more than 40 percent and the site size is not increased substantially. Their objections were based on the position that this category of projects generates significant interest at the local level.

Almost one-fourth of the comments objected to the proposed exclusion of actions involving disposal of unimproved land on the ground that local governments would be interested in knowing of forthcoming disposals so that they may evaluate possible acquisition of the land for their purposes.

One comment objected, without a reason given, to the proposed exclusion of facility repair projects. This category of action was proposed for exclusion because it is not "direct federal development" within the meaning of Executive Order 12372. The Postal Service has determined that since this type of action is not within the meaning of the Order, it is automatically excluded, and, therefore is not cited as an exclusion in the final rule.

In view of (1) the Postal Service's policy and practice to comply with Title IV of the Intergovernmental Cooperation Act, which requires that national, state, regional, and local viewpoints be fully considered and taken into account in planning federal projects, and (2) provisions of the Executive Order which reserves for the state process, at the discretion of state and local elected officials, the right to exclude certain federal programs from review and comment, the Postal Service's final rule contains no exclusions from the review process.

In conformance with § 778.3, as published hereafter, the Postal Service hereby publishes the following list of categories of facility project actions that are subject to those regulations:

(1) New facility construction, owned or leased.

(2) Expansion of an existing facility.

(3) Purchase or lease of an existing building if a new or substantially enlarged occupancy is involved.

(4) Real property disposals.

(5) Other postal facility actions that might directly affect state or local community plans.

Conformance of Existing Regulations

The Postal Service is conforming existing regulations pertaining to the National Environmental Policy Act and Executive Orders on floodplain management and protection of wetlands by removing references to former OMB Circular A-95. Since OMB Circular A-95 will be revoked when the intergovernmental review regulations, published hereafter, become effective on September 30, 1983, the Postal Service is amending 39 CFR 775 and 776 to replace references to the A-95 clearinghouse process with appropriate references to the new coordination process. In addition, conforming changes are to be made to the Postal Contracting Manual and corresponding procedures established in the Postal Service Administrative Support Manual.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

For the reasons set out in the preamble, the Postal Service amends Title 39, Code of Federal Regulations, as follows:

List of Subjects in 39 CFR Part 778

Intergovernmental relations, Postal Service.

1. Add a new Part 778 to read as follows:

PART 778—INTERGOVERNMENTAL REVIEW OF POSTAL SERVICE FACILITY ACTIONS

Sec.

Authority: 39 U.S.C. 401.

§ 778.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, which the Postal Service follows as a matter of policy.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct federal development projects.

(c) These regulations are not intended to create any right or benefit enforceable at law by a party against the Postal Service or its officers.

(d) These regulations implement Executive Order 12372 and are adopted under the Postal Reorganization Act rather than the statute and Executive Order listed in paragraph (a) of this section to the extent the statute and Executive Order do not apply to the Postal Service under 39 U.S.C. 410(a).

§ 778.2 What definitions apply to these regulations?

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 778.3 What categories of facility project actions of the Postal Service are subject to these regulations?

The Postal Service publishes in the Federal Register a list of its categories of facility project actions that are subject to these regulations.

§ 778.4 What are the Postal Service's general responsibilities under the Order?

(a) The Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly

affected by the Postal Service's facility project actions.

(b) If a state adopts a process under the Order to review and coordinate proposed direct federal development projects, the Postal Service, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a facility project action's planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed direct federal development projects that are communicated through the state process; and

(4) [Reserved].

(5) [Reserved].

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when a proposed direct federal development project has an impact on interstate metropolitan urban centers or other interstate areas.

(7) [Reserved].

§ 778.5 What is the Postal Service's obligation with respect to federal interagency coordination?

The Postal Service, to the extent practicable, consults with and seeks advice from other federal departments and agencies substantially affected by Postal Service facility project actions covered under these regulations.

§ 778.6 What procedures apply to a state's choice of facility action categories under these regulations?

(a) A state may select any categories of facility project actions published in the **Federal Register** in accordance with § 778.3 for intergovernmental review under these regulations. Each state, before selecting categories of facility project actions, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Postal Service of the Postal Service's categories of facility actions selected for that process.

(c) A state may notify the Postal Service of changes in its selections at any time. For each change, the state shall submit to the Postal Service an assurance that the state has consulted with local elected officials regarding the change. The Postal Service may establish deadlines by which states are required to inform the Postal Service of changes in their facility action category selections.

(d) The Postal Service uses a state's process as soon as feasible, after the Postal Service is notified of the state's selections.

§ 778.7 How does the Postal Service communicate with state and local officials concerning the Postal Service's facility project actions?

(a) [Reserved].

(b) The Postal Service provides notice directly to affected state, areawide, regional, and local entities in a state of a proposed direct federal development project if—

(1) The state has not adopted a process under the Order; or

(2) The development project involves a facility project action category not selected for the state process.

This notice may be made by publication in local newspapers and/or by letter.

§ 778.8 How does the Postal Service provide states an opportunity to comment on proposed facility project actions?

(a) Except in unusual circumstances, the Postal Service gives state processes or directly affected state, areawide, regional and local officials and entities—

(1) [Reserved].

(2) At least 60 days from the date established by the Postal Service to comment on proposed facility project actions (except as noted in paragraph (a)(3) of this section).

(3) For facility project actions in the Washington, DC National Capital Region, coordination also is accomplished with the National Capital Planning Commission (NCPC). The Postal Service gives the NCPC 90 days to comment on projects in the Maryland and Virginia portions of the National Capital Region.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Postal Service have been delegated.

§ 778.9 How does the Postal Service receive and respond to comments?

(a) The Postal Service follows the procedures in § 778.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a facility project action of a category selected under § 778.6.

(b) (1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or does not submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service.

(d) If a facility project action is not selected for a state process, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service. In addition, if a state process recommendation for a nonselected facility project action is transmitted to the Postal Service by the single point of contact, the Postal Service follows the procedures of § 778.10.

(e) The Postal Service considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Postal Service is not required to apply the procedures of § 778.10 when such comments are provided by a single point of contact or directly to the Postal Service by a commenting party.

§ 778.10 How does the Postal Service make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Postal Service through its single point of contact, the Postal Service either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of its decision as the Postal Service in its discretion deems appropriate. The Postal Service may also supplement the written explanation by providing the explanation to the single pont of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Postal Service informs the single point of contact that:

(1) The Postal Service will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Postal Service has reviewed the decision and determined that because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 778.11 What are the Postal Service's obligations in interstate situations?

(a) The Postal Service is responsible for:

(1) Identifying proposed direct federal development projects that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Postal Service's facility project action for review.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Postal Service's facility project action for review.

(4) Responding pursuant to § 778.10 if the Postal Service receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Postal Service have been delegated.

(b) The Postal Service uses the procedures in § 778.10 if a state process provides a state process recommendation to the Postal Service through a single point of contact.

§ 778.12 [Reserved]

§ 778.13 May the Postal Service waive any provision of these regulations?

In an emergency, the Postal Service may waive any provision of these regulations.

2. Amend Parts 775 and 776 as indicated:

PART 775—[AMENDED]

§ 775.6 [Amended]

In 39 CFR 775.6(a)(5)—Remove ", including that required by OMB Circular A–95 (Revised)," and add "or notice, including that required by Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions,".

§ 775.8 [Amended]

In 39 CFR 775.8(d)(3)(iii)—Remove "A–95 Clearinghouses" and add "the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions".

§ 775.10 [Amended]

In 39 CFR 775.10(a)(3)(i)—Remove "state, areawide, and local A–95 clearinghouses listed in OMB Circular A–95 (Revised) for the geographic area involved" and add "the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions".

PART 776—[AMENDED]

§ 776.5 [Amended]

In 39 CFR 776.5(f)(3)—Remove "A–95 Clearinghouses" and add "the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions".

§ 776.8 [Amended]

In 39 CFR 776.8(a)—Remove "state, areawide, and local A–95 Clearinghouses listed in OMB Circular A–95 (Revised) for the geographic area involved" and add "the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions".

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Part XXVII

Small Business Administration

Intergovernmental Review of the Small Business Administration Programs and Activities; Final Rule

and

Programs and Activities Subject to Intergovernment Review; Notice

SMALL BUSINESS ADMINISTRATION

13 CFR Part 135

Intergovernmental Review of the Small Business Administration Programs and Activities

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to Federal financial assistance and direct Federal development programs and activities of the Small Business Administration. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Associate General Counsel, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3282), the Small Business Administration (SBA), along with 25 other Federal Agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. SBA, in conjunction with the other 27 Federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983 and requesting comments on several tentative responses to comments.

Including comments received by OMB and other Federal agencies which were also incorporated in SBA's rulemaking docket, SBA received approximately 160 comments on government-wide issues during the comment period. In addition, SBA received approximately 15 comments specifically related to the inclusion or exclusion of this Agency's programs from the coverage of the Order or other issues pertaining only to SBA.

In preparing the final rule, SBA considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 Federal agencies that are issuing a final rule, the SBA has made several changes from the proposed rule. The Agency is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which Federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). SBA's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance and direct Federal development;
—Increases Federal responsiveness to state and local officials by requiring Federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the Federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the Federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how Federal agencies will operate under such situations) do not apply. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed Federal financial assistance or direct Federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for Federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these Federal programs and activities are to be reviewed through the state process

and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate Federal agencies.

The Federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the Federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by Federal agencies. The single point of contact does so by transmitting a process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for Federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a Federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for Federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the Federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the Federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the Federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the Federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, SBA is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-section analysis

In making changes from the NPRM to this final rule, SBA altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
135.1	135.1.
135.2	135.2.
135.3(a)	135.3.
135.3(b)	135.7(a).
135.4	135.4.
135.5(a)	135.6(b).
135.5(b)	135.6(d).
135.5(c)	135.6(c).
135.6(a)	135.8(b).
135.6(b)	135.7(a).
135.6(c)	135.8(a).
135.6(d)	Deleted.
135.6(e)	135.9.
135.7(a)	135.10(a).
135.7(b)	135.10(b), (c).
135.8	135.11.
135.9	135.12 (Reserved).
135.10	135.13.

Portions of the final rule not listed in this table (§§ 135.5, 135.6(a), 135.7(b), and 135.8(c)) are new.

Section 135.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act, 31 U.S.C. 6506, as authority, did not specifically contain provisions to implement some of its requirements.

The text of section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that Federal agencies carry out their responsibilities under these statutes. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that Federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Agency, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between SBA and other Federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of Federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended

to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, SBA is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 135.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. SBA does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-know term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the agency would not use the term in any but its commonly understood sense.

The Agency chose not to include a definition of "state plans," "direct Federal development," or "Federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to Federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

SBA also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circustances is to give Federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Agency expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

SBA also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 135.10. In this section, the Administrator accepts the state process recommendation or reaches a mutually agreeable solution. If the Agency does not provide an accommodation in one of these two ways, it must provide an explanation. Since SBA believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Agency considered whether to include a definition of the term "state process recommendation." SBA concluded that a definition of this term would not materially help clarify those situations in which the Agency has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 135.3 What programs and activities of the Agency are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the Federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all Federal programs and activities. Its scope is limited to Federal financial assistance and direct Federal development progams and activities, and the Order mandates consultation only when state and local governments provide non-Federal funds for, or are directly affected by the proposed Federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for Federal agencies to decide which of their activities are Federal financial assistance or direct Federal development.

There are also actions related to Federal financial assistance or direct Federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Agency's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the Federal Government, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, SBA believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, SBA has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Agency is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule in order to allow future changes to be made more conveniently. SBA will seek public comment on proposed future program or activity exclusions as these occur.

Section 135.4 What are the Administrator's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 135.5 What is the Administrator's obligation with respect to Federal interagency coordination?

Some comments, including those suggesting a Federal single point of contact, asked SBA and other Federal agencies to do more in ensuring that Federal agencies communicate not only with state and local elected officials but also with each other. The Agency believes that this point is well taken. Many programs and projects require information or approvals from a number of Federal agencies, and Federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, SBA is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Administrator, to the maximum extent practicable, will consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and SBA regarding programs and activities covered under these regulations.

Section 135.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by section 135.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. SBA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Agency does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of §135.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Agency to establish deadlines for states to inform the Administrator of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make midstream changes in coordination procedures on short notice. In addition, SBA has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of §135.7, discussed below.

Section 135.7 How does the Administrator communicate with state and local officials concerning the Agency's programs and activities?

Paragraph (a) is reserved.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Agency must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Agency may also take the initiative at any time to contact any interested person or entity about one of the Agency's programs or activities. Further, SBA need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Agency notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. SBA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the SBA communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Agency will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed Federal financial assistance or direct Federal development. This notice may be either direct (e.g., a letter to the mayor of an affected city) or through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed Federal action). The notice will alert the directly affected entities concerning the proposed action and identifying who in SBA should be contacted for more information.

Section 135.8 How does the Administrator provide states the opportunity of commenting on proposed Federal financial assistance and direct Federal development?

More commenters—over a third of the total—addressed § 135.6(c) of the NPRM (redesignated § 135.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Administrator would give states at least 30 days to comment on any proposed Federal financial assistance or direct Federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, SBA has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

The Administrator will establish, by notice to the point of contact or to directly affected entities, a date from which the 30 to 60 day comment period will begin to run. Where a program or activity is not selected for the state process, the Agency will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed Federal action. Because paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 135.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Agency is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. SBA encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 135.6 of the NPRM has been dropped. A new § 135.9 of the final rule describes how the Administrator receives and responds to comments.

Section 135.9 How does the Administrator receive and respond to comments?

This new section replaces § 135.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 135.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the Federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to Federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Agency's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Agency has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implemention of the Executive Order requires a means of handling the communication and information flow between Federal-state/local and state/local-Federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-Federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed Federal actions. It does not matter to SBA whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. SBA is concerned only that the single point of contact communicate those comments and recommendations to the Agency.

Paragraph (a) obligates the Administrator to follow the "accommodate or explain" procedures of § 135.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Agency.) If these conditions are not met, the Administrator will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities to the state and Federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that Federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, SBA will always fully consider all comments it receives under these regulations.

The SBA's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Agency's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, serveral commenters said that it would be difficult or undesirable to achieve consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day

review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, SBA will respond as provided in section 135.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from SBA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Agency.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Agency before the review and comment period ends. These entities may also choose to send their comments directly to SBA concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Agency all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, the Agency considers all views from state, areawide, regional, and local entities or officals. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Agency makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Agency. The Agency is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Agency. The Agency deliberated whether in this rule to require applicants to transmit all comments they had received. SBA decided not to impose such a requirement in this rule but expects applicants to do so. SBA retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Agency's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Agency. This obligation derives directly from section 401.

A number of commenters suggested that SBA and other Federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that Federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that Federal agencies not act on an application before receiving comments from the state process, that Federal agencies require applicants to submit materials requested by the state process, and that Federal agencies have applicants themselves contact interested local parties.

Although SBA recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Agency does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. SBA believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Agency will expect the applicant to forward those comments with its application to the Agency. However, this does not obviate the necessity for transmitting the state process recommendation to SBA through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Agency.

Section 135.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Agency through a single point of contact, SBA becomes obligated to accommodate or explain. This means that SBA need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Agency will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that SBA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Agency will always send a written explanation of the nonaccommodation.

As under the proposed rule, SBA will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, SBA believes that to avoid unduly delaying the award of Federal financial assistance or the start of direct Federal development, a longer period should not be provided. SBA believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Agency has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If SBA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Agency sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This

presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, SBA will be free to begin carrying out its decision on the sixteenth day after the day the Agency sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, SBA will make an effort to be as responsive as practicable consistent with the Agency's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 135.11 What are the Administrator's obligations in interstate situations?

This section is based on § 135.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

SBA received several comments on its handling of interstate situations. Most of these comments asked for greater Federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

SBA does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Agency's interest to have affected states mutually agree on the Agency's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, SBA will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

SBA believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Agency will make efforts to notify in interstate situations. OMB will periodically provide SBA with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Agency if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Agency, and that recommendation is transmitted to the Agency through the single point of contact of either Maryland, Virginia, or the District of Columbia, SBA is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, SBA would also accommodate or explain that recommedation as well.

Section 135.12 [Reserved]

Section 135.13 May the Administrator waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing Federal noncompliance with the Executive Order. SBA is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provision of these regulations. If SBA uses the emergency waiver provision, SBA will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, SBA will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to SBA to which SBA would like to respond. Several commenters said that the Office Management and Budget should have a stronger oversight role, thus ensuring that Federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that Federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

SBA wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Agency's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to Federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and wavers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other Federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to Federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Agency are responsible to the Administrator, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded SBA and other agencies that we should continue to follow existing statutory requirements that affect many Federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Agency will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, SBA will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, SBA will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouse often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

In the NPRM, SBA proposed that the following program be covered by the proposed rule: the Small Business Development Center (SBDC) Program, authorized by section 21(a)(1) of the Small Business Act, 15 U.S.C. 648(a)(1). The SBDC program involves direct grants to states or other authorized entities for small business development centers and is therefore, appropriately covered by the provisions of this rule.

The NPRM proposed to exclude from the coverage of the proposed regulation the following programs because they involve direct financial assistance between the Federal Government and nongovernmental entities and do not involve state or local government entities: the State and Local Development Company Program authorized by sections 501, 502 and 503 of the Small Business Investment Act of 1958, 15 U.S.C. 695, 696, 697; the Pollution Control Program, authorized by section 404(b) of the Small Business Investment Act of 1958, 15 U.S.C. 694-1; and the Small Business Investment Company Program, authorized by section 301 and the Small Business Investment Act of 1958, 15 U.S.C. 681. In the NPRM, SBA proposed to exclude the following program from the coverage of the proposed regulation because it involves only direct financial assistance between the Federal Government and individuals, businesses, or nonprofit organizations: the Disaster Loan Program, authorized by sections 7(b)(2)(C) and (D) of the Small Business Act, 15 U.S.C. 638(b)(2)(C) and (D).

SBA received 11 comments which addressed the scope of the proposed regulations. The comments fall into five distinct categories which will be addressed separately below. After careful consideration of all comments, SBA intends to retain the inclusions and exclusions proposed in the NPRM. SBA will publish for public comment any future proposed exclusions. SBA will also publish in the **Federal Register** any future changes in or additions to the scope of the coverage of this rule.

One comment suggested that all of our exclusions be reconsidered. This comment did not specify the state's concerns, and therefore we are not able to formulate an appropriate amendment to the exclusionary provision in response to this comment.

Another comment requested that our Small Business Development Center Program not be excluded from coverage under these regulations. This program was not excluded in the original proposal, and there is no intention to provide an exclusion in the final regulations.

A third group of comments suggested that all of our loan programs be covered by the regulations. SBA's loan programs are designed to provide financial assistance from SBA directly to individual borrowers. This is true for all our loan assistance programs. Therefore, we do not feel that these programs come within the purview of the Executive Order which relates to financial assistance provided by Federal agencies.

Another comment suggested that SBA include grants made for small business economic research under coverage of these regulations. The statutory authority for such grants has been eliminated by operation of law, and replaced by the authority for Small Business Development Centers (SBDC's). Since SBDC's are specifically covered by these regulations, we trust that the commenting state's concerns will be allayed.

Finally, a series of comments suggested that SBA's Small Business Investment Company (SBIC) and State and Local Development Company Programs be brought under the coverage of these regulations. In these programs, SBA makes financial assistance available to SBIC's and development companies, which in turn make financial assistance available to business concerns for certain statutorily specified purposes, such as business development and job creation. The financial assistance which SBA makes available includes either direct loans to SBIC's and development companies or the purchase or guarantee of the debentures of SBIC's and development companies. No grants are involved in these programs.

The SBIC's and development companies are not state or local agencies. The only involvement between the SBIC's development companies and the state or localities presently required by SBA's legislation and regulations is a requirement that the companies be chartered by the state in which they do business just as other corporations are chartered.

Therefore, it is SBA's position that the SBIC and development company programs do not come within the coverage of Executive Order 12372 and should be excluded from coverage under these regulations.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

SBA has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with SBA and allow state and local governments to establish cost effective consultation procedures. For this reason, the Agency believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently SBA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

1. For the reasons set out in the Preamble, the Small Business Administration amends Title 13, Code of Federal Regulations, by adding a new Part 135, to read as follows:

PART 135—INTERGOVERNMENTAL REVIEW OF SMALL BUSINESS ADMINISTRATION PROGRAMS AND ACTIVITIES

Sec.

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

§ 135.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

§ 135.2 What definitions apply to these regulations?

"Agency or SBA" means the U.S. Small Business Administration.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Administrator" means the Administrator of the U.S. Small Business Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 135.3 What programs and activities of the Agency are subject to these regulations?

The Administrator publishes in the **Federal Register** a list of the Agency's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 135.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those state and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the SBA.

(b) If a state adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected official's concerns with proposed Federal financial assistance and direct Federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Support state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 135.5 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the SBA regarding programs and activities covered under these regulations.

§ 135.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 135.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Administrator an assurance that the state has consulted with elected local officials regarding the change. The Agency may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 135.7 How does the Administrator communicate with state and local officials concerning the Agency's programs and activities?

(a) [Reserved];

(b) The Administrator provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the Agency in its discretion deems appropriate.

§ 135.8 How does the Administrator provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Administrator gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) [Reserved];

(2) At least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

§ 135.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 135.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 135.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of § 135.10 of this Part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 135.10 of this Part, when such comments are provided by a single point of contact directly to the Agency by a commenting party.

§ 135.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to SBA through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 135.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select SBA's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 135.10 of this Part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 135.10 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 135.12 [Reserved].

§ 135.13 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

Dated: June 9, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-18633 Filed 6-23-83; 8:45 am]

BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION

Programs and Activities Subject to Intergovernment Review

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: In Part XXVII of today's Federal Register the Small Business Administration (SBA) published final regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations can be found at Part 135 of Title 13 of the Code of Federal Regulations.

Pursuant to § 135.3 of Title 13, Code of Federal Regulations, SBA is now publishing a list of the Agency's programs and activities that are subject to the intergovernmental review regulations (13 CFR Part 135).

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Associate General Counsel, 1441 L Street, N.W., Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION: SBA regulations found at 13 CFR Part 135 require SBA to follow an intergovernmental review system for programs through which the Agency provides financial assistance directly to individual states or localities. Therefore, the only SBA program which is subject to the intergovernmental review regulations is the Small Business Development Center program, authorized by section 21(a)(1) of the Small Business Act, 15 U.S.C. 648(a)(1).

Dated: June 9, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-16632 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XXVIII

Tennessee Valley Authority

Intergovernmental Review of Tennessee Valley Authority Programs and Activities; Final Rule, and

Intergovernmental Review of Federal Financial Assistance and Direct Federal Development Programs and Activities; Program and Activity Inclusions; Notice

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1311

Intergovernmental Review of Tennessee Valley Authority Programs and Activities

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and will assist TVA in carrying out its responsibilities under the TVA Act. The regulations apply to federal financial assistance and direct federal development programs and activities of TVA. Executive Order No. 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Ginn, Economic and Community Development, Tennessee Valley Authority, 2E 55 Old City Hall, Knoxville, Tennessee 37902 (615-632-6605).

SUPPLEMENTARY INFORMATION: On January 24, 1983, 26 federal agencies published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order No. 12372 or notices proposing that their programs not be subject to the Order.

Subsequently, TVA and the Department of Housing and Urban Development published NPRM's, bringing to 28 the total number of proposals subject to public comment. TVA's NPRM was published at 48 FR 9,497-9,501 (1983). TVA, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17,101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to government-wide comments.

TVA received no comments specifically related to the inclusion or exclusion of its programs from the coverage of the Order or other issues pertaining only to TVA. However, TVA's proposed regulations generally followed the format utilized by the other federal agencies and OMB and other federal agencies received approximately 160 comments on government-wide issues during the comment period which TVA has considered.

In preparing the final rule, TVA considered these written comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, several changes have been made from the proposed rule. TVA is fully committed to carrying out Executive Order No. 12372, and intends, through these regulations, to communicate effectively with state and local elected officials and to accommodate their viewpoints to the greatest extent possible. These procedures will complement the other methods that TVA uses to coordinate its programs and activities with state, regional, and local governments and the public.

Several state, local, and regional governments asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 30,959; July 16, 1982). Accordingly, TVA's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order No. 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30,959; July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Revokes OMB Circular A-95.

Salient Features of the Policies Implementing E.O. No. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except OMB Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and
—A means of giving notice to prospective applicants for federal assistance as to how an application is

to be managed under the state process.

Federal agencies will list those federal financial assistance and direct federal development programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities. For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact, forwarding the views of commenting officials and entities without a recommendation, and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the regulations for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodated or explained response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation, (2) reach a mutually agreeable solution with the parties preparing the recommendation, or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, *i.e.*, nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—*i.e.*, the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, TVA altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule	Final rule (section)
1311.1	1311.1
1311.2	1311.2
1311.3(a)	1311.3
1311.3(b)	1311.7(a)
1311.4	1311.4
1311.5(a)	1311.6(b)
1311.5(b)	1311.6(d)
1311.5(c)	1311.6(c)
1311.6(a)	1311.8(b)
1311.6(b)	1311.7(a)
1311.6(c)	1311.8(a)
1311.6(d)	1311.9
1311.7(a)	1311.10(a)
1311.7(b)	1311.10(b), (c)
1311.8	1311.11
1311.9	1311.12
1311.10	1311.13

Portions of the final rule not listed in this table (§§ 1311.5, 1311.6(a), 1311.7(b), and 1311.8(c)) are new.

Section 1311.1 What is the purpose of these regulations?

A broad spectrum of commenters, including state, local, and regional governments, interest groups, and members of Congress, commented that the regulations implementing Executive Order No. 12372 should also implement each federal agency's responsibilities under Title IV of the Intergovernmental Cooperation Act ("ICA") and section 204 of the Demonstration Cities and Metropolitan Development Act ("Model Cities Act"). TVA agrees and in fact structured its proposed regulations to implement the ICA to the extent possible within the government-wide regulatory framework (TVA does not make financial grants or distribute Model Cities Act funds, and the Model Cities Act is inapplicable to TVA).

In light of these comments, the Executive Order was amended to reference section 204 of the Model Cities Act, and OMB and the other federal agencies have decided to modify their regulations to implement the applicable provisions of Title IV of the ICA and section 204 of the Model Cities Act. Consequently, although this does not require a substantive change in TVA's regulatory approach, this change in the government-wide regulatory framework will allow TVA more flexibility in achieving its responsibilities under the ICA, and various other provisions of TVA's proposed regulations have been modified accordingly.

The text of section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information Section of USDA's document).

Section 401 emphasizes that federal aid for development purposes should be consistent as possible with the comprehensive planning activities at state, regional, and local levels. TVA, when considering and making efforts to

accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section and is committed to meeting them.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any rights of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between TVA and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state, and local officials in communicating with one another and seeking to understand one another's viewpoints. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, TVA is stating only these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 1311.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. TVA does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, TVA would not use the term in any but its commonly understood sense.

TVA chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (*e.g.*, civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of TVA activity and program inclusions accompanying this rulemaking provides adequate operational information upon which state and local elected officials can act.

TVA also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, TVA expects to use such provisions sparingly, and only when absolutely necesssary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

TVA also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 1311.10. In this section, TVA accepts the state process recommendation or reaches a mutually agreeable solution. If TVA does not provide an accommodation in one of these two ways, it must provide an explanation. Since TVA believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, TVA considered whether to include a definition of the term "state process recommendation." TVA concluded that a definition of this term would not materially help clarify those situations in which TVA has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 1311.3 What programs and activities of TVA are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of government-wide comments contended that it was contrary to the intent of the Order for agencies to exclude any programs or activities from coverage under the Order and these regulations, and that the elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other government-wide comments objected to the various criteria used by some federal agencies in developing their lists of programs and activities that were being proposed for exclusion. TVA used the potential for significant impacts on area or community planning or on the physical environment and TVA's experience in implementing OMB Circular A-95 as its criteria for proposing exclusions. These criteria, which are derived from the ICA, were not objected to by any commenters.

The Order does not purport to cover all federal programs and activities. Its scope, as well as that of the ICA, is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (*e.g.*, Coast Guard search and rescue activities, procurement of military weapon systems, TVA's nonappropriated-funded power system activities). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. As TVA stated in the preamble to its proposed regulations, TVA actively seeks the viewpoints of state, regional, and local governments on its program and activities. TVA will continue to do this whether or not its programs and activities are subject to these procedures.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (*e.g.*, rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (*e.g.*, formulation of TVA's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, TVA believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. However, in response to government-wide comments, TVA has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in its NPRM. Because the criteria TVA used are derived from the ICA and no objections to either these criteria or TVA's proposed exclusions

were received, TVA sees no reason to not adopt the exclusions as proposed.

To provide information on the federal financial assistance and direct federal development activities and programs eligible for selection for state processes, TVA is publishing a notice listing these "included" programs and activities. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. TVA will seek public comment on proposed future program or activity exclusions as these occur.

Section 1311.4 [Reserved].

Section 1311.5 What is TVA's obligation with respect to federal interagency coordination?

Some government-wide comments, including those suggesting a federal single point of contact, asked that the regulations do more to ensure that federal agencies communicate not only with state and local elected officials but also with each other. TVA believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, TVA is adding a new section, the language of which is derived from subsection 401(d) of the ICA. The section provides that TVA, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and TVA regarding programs and activities covered under these regulations.

Section 1311.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 1311.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (*e.g.*, a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. TVA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, TVA does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c), and (d) of this section derive from paragraphs (a), (c), and (b), respectively, of § 1311.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to TVA with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows TVA to establish deadlines for states to inform TVA of changes in program selections. The primary reason for this provision is to reach decisions on projects with external time constraints or at times of heavy workload. For example, deadlines could be set to avoid having to make on short notice midstream changes in coordination procedures. In addition, some editorial changes have been made for better clarity.

A number of government-wide comments asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 1311.7, discussed below.

Section 1311.7 How does TVA communicate with state, regional, and local officials concerning TVA's programs and activities?

Paragraph (a) incorporates material from paragraphs 1311.3(b) and .6(b) of the NPRM, except that the final regulation specifies that TVA's obligation to communicate with state, regional, and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that TVA will communicate with under these procedures.

The notice provided for by this section is not exclusive. Many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. TVA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. TVA may also take the initiative at any time to contact any interested person or entity about one of TVA's programs or activities. Further, TVA need not rely on the state process or the single point of contact to bring about this communication or consultation. TVA considers this Exective Order process to be just one of many ways that TVA will have available to obtain the viewpoints of state, regional, and local governments and of the general public. As a grassroots agency, TVA works side by side with all levels of government in the Tennessee Valley region in both formulating and implementing the programs and activities which will benefit the citizens and environment of the region.

When TVA notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, it is anticipated that the state process will notify areawide, regional, and local entities for purposes of section 401. The single point of contact could be the information channel for this purpose. TVA intends to notify areawide, regional, and local entities that would not obtain notification through the state process. Moreover, TVA will provide notice directly to those entities that TVA knows have a direct interest in the matter.

Paragraph (b) is new, and is intended to respond to concerns expressed by government-wide comments on how agencies communicate with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. TVA will carry out its responsibilities in these situations by providing notice to state, areawide, regional, or local officials or entities that would be directly affected

by the proposed federal financial assistance or direct federal development. This notice may be either through publication (*e.g.*, in a publication widely available in the area potentially affected by the proposed federal action) or direct (*e.g.*, a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who in TVA should be contacted for more information.

Section 1311.8 How does TVA provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More government-wide comments—over a third of the total—addressed § 1311.6(c) of the NPRM (redesignated § 1311.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, TVA would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some of these comments suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved. In response to these comments, TVA has decided to lengthen the comment period to 60 days in all cases (including interstate matters).

TVA will establish, by notice to the single point of contact or to directly affected entities, a date from which the 60-day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning a direct development project. Where a program or activity is not selected for the state process, TVA will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional, and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that TVA will establish this starting date, the language of the NPRM permitting TVA to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, TVA will ensure that commenting parties are afforded adequate time to review and comment on a project proposal.

Paragraph (b) of this section is derived from § 1311.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with TVA have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Section 1311.9 How does TVA receive and respond to comments?

This new section replaces § 1311.6(d) of the NPRM in part and elaborates in substantially greater detail TVA's obligations concerning the receipt of and response to comments. Section 1311.6(d) had provided that TVA would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and federal agencies.

About a quarter of all government-wide comments received discussed this "single point of contact" concept, with a majority of those comments opposing the establishment of a single point of contact or expressing serious reservations about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the viewpoints of local elected officials and regional areawide entities. In response to these comments, and consistent with the amended Executive Order, TVA has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory and uniform implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better than a multiplicity of communications channels. If all federal agenices and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

The primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state, regional, and local officials on proposed federal actions. It does not matter under the Executive Order process whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. TVA is concerned only that the single point of contact communicate those comments and recommendations to TVA.

Paragraph (a) obligates TVA to follow the "accommodate or explain" procedures of § 1311.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. If these conditions are not met, TVA will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, TVA will always fully consider all comments it receives whether under these regulations, through some other coordination process, or independent of any process.

TVA's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. TVA expects that carrying

out TVA's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several government-wide comments said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, TVA will respond as provided in section 1311.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from TVA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by TVA.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to TVA before the review and comment period ends. These entities may also choose to send their comments directly to TVA concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to TVA all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 specifies, TVA will have the opportunity to consider all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), TVA makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to TVA. TVA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of TVA.

Paragraph (e) simply reiterates TVA's obligation to consider all the comments it receives from state, areawide, regional, and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to TVA. This obligation derives directly from section 401.

Section 1311.10 How does TVA make efforts to accommodate intergovernmental viewpoints?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to TVA through a single point of contact, TVA becomes obligated to accommodate or explain. This means that TVA need not accommodate or explain comments that (1) do not constitute or form the state process recommendation or (2) are not provided through a single point of contact. TVA will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of government-wide comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that TVA may not also inform the single point of contact and interested regional and local officials of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, TVA will always send a written explanation of the nonaccommodation.

As under the proposed rule, TVA will not implement a decision for 10 days after the single point of contact receives the explanation. A few government-wide commenters suggested that this waiting period should be longer than 10 days; however, TVA believes that to avoid unduly delaying the start of direct federal development a longer period should not be provided. TVA believes that 10 days will be adequate time for the state process to formulate an appropriate course of action if the issue is sufficiently important within the state.

TVA has included a new paragraph (c) in the regulation to clarify when the 10-day waiting period begins to run. If TVA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the 10-day period begins to run from the date of that communication, even though the written explanation arrives later. If TVA sends a letter but does not make a telephone call, the 10-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, TVA will be free to begin carrying out its decision on the 16th day after the day TVA sent the letter.

Some government-wide comments indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness by some federal agencies was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, TVA will continue its efforts to be as responsive as practicable consistent with TVA's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 1311.11 What are TVA's obligations in interstate situations?

This section is based on § 1311.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

Several government-wide comments were received on the handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

TVA does not believe that it is necessary to change the proposed regulation to provide any particular

procedure for resolving interstate conflicts. It is clearly in TVA's interest to have affected states mutually agree on TVA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, TVA will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

TVA believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which TVA will make efforts to notify in interstate situations. OMB will periodically provide TVA with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by TVA if it is sent through a state single point of contact and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C., Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia, and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action of a federal agency, and that recommendation is transmitted to the agency through the single point of contact of either Maryland, Virginia, or the District of Columbia, the agency is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the agency would also accommodate or explain that recommendation as well.

Section 1311.12 [Reserved].

Section 1311.13 May TVA waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few government-wide comments objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. TVA is strongly committed to compliance with the Order and the ICA and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If TVA uses the emergency waiver provision, TVA will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, TVA will keep records of all situations in which the emergency waiver was used.

Other Government-Wide Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other government-wide comments which TVA would like to respond. Several commenters said that OMB should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

TVA wants to state unequivocally that it is fully committed to implementing all of the provisions of the ICA, the Order, and these regulations and will act quickly to respond to complaints from state, areawide, regional, and local officials and entities that mistakes or omissions have been made with respect to TVA's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, TVA staff are responsible to TVA's Board of Directors.

Finally, a number of commenters reminded other agencies that they should continue to follow existing statutory requirements that affect many federal agencies with respect to environmental impact statements, historic preservation, civil rights, etc. TVA will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, TVA will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, TVA will continue to meet all legal requirements in these areas. Moreover, TVA intends to continue its policy of widely coordinating its activities with potentially affected states, regional, and local governments and the public whether or not such activities are subject to the ICA, the Executive Order, these regulations, or other review requirements.

Scope

TVA received no comments on the exclusions it proposed in its draft regulations (48 FR 9499–9500). These exclusions are based on the criteria of the ICA and TVA's experience in implementing OMB Circular A–95. Accordingly, TVA has decided to adopt the exclusion as proposed. These exclusions are:

1. Agreements involving minor land uses—TVA's experience has been that these kinds of actions normally do not have a significant impact on area and community planning or on the physical environment.

2. Transfer or acquisition of land or landrights except transfers or acquisitions for major industrial, recreation, or commercial developments—it has been TVA's experience that these kinds of actions normally do not have a significant impact on area or community planning.

3. Minor research or demonstration projects with state and local agencies or private organizations—TVA's experience has been that these kinds of activities normally do not have a significant impact on area or community planning.

4. Technical and planning assistance activities—TVA's experience has been that these kinds of activities do not have a significant impact on area or community planning.

5. Approvals under Section 26a of the TVA Act of minor structures, boat docks, or shoreline facilities—TVA's experience has been that these kinds of activities normally do not have a significant impact on area or community planning.

TVA's power program—TVA's power program is self-financing and does not use appropriated funds. It is neither a

federal financial assistance program nor a direct federal development activity and, accordingly, not subject to the Executive Order or these regulations. TVA presently coordinates with state and local governments all power program construction activities for which an environmental impact statement is prepared under TVA's NEPA procedures or which significantly affect the governmental responsibilities of a state or local government (those power-construction activities which would place potential demands on or impact state or local services such as policy and fire protection, health care, sewage treatment, solid waste disposal, and transportation). TVA intends to continue to coordinate such activities and will include coordination with the state single point of contact if a state desires.

Executive Order No. 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

TVA has determined that this is not a major rule under Executive Order No. 12291. The rule will simplify consultation with TVA and allow state and local governments to establish cost effective consultation procedures. For this reason, TVA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, TVA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

W. F. Willis,

General Manager.

1. For the reasons set out in the Preamble, TVA amends Title 18, Code of Federal Regulations, by adding a new Part 1311, to read as follows:

PART 1311—INTERGOVERNMENTAL REVIEW OF TENNESSEE VALLEY AUTHORITY FEDERAL FINANCIAL ASSISTANCE AND DIRECT FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

Authority: Tennessee Valley Authority Act of 1933, 48 Stat. 58, *as amended*, 16 U.S.C. 831–831dd (1976; Supp. V, 1981); Executive Order No. 12372, July 14, 1982 (47 FR 30,959), amended April 8, 1983 (48 FR 15,887); Section 401 of the Intergovernmental Cooperation Act of 1968, *as amended*.

§ 1311.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order No. 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and are intended to assist TVA in carrying out its responsibilities under the TVA Act.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of TVA, and are not intended to create any right or benefit enforceable at law by a party against TVA or its officers.

§ 1311.2 What definitions apply to these regulations?

"TVA" means the Tennessee Valley Authority, a wholly owned corporation and independent instrumentality of the United States.

"Order" means Executive Order No. 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1311.3 What programs and activities of TVA are subject to these regulations?

TVA publishes in the **Federal Register** a list of TVA's federal financial assistance and direct federal development programs and activities that are subject to these regulations.

§ 1311.4 [Reserved.]

§ 1311.5 What is TVA's obligation with respect to federal interagency coordination?

TVA, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and TVA regarding programs and activities covered under these regulations.

§ 1311.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 1311.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify TVA of the programs and activities selected for that process.

(c) A state may notify TVA of changes in its selections at any time. For each change, the state shall submit to TVA an assurance that the state has consulted with local elected officials regarding the change. TVA may establish deadlines by which states are required to inform TVA of changes in their program selections.

(d) TVA uses a state's process as soon as feasible, depending on individual programs and activities, after TVA is notified of the states selections.

§ 1311.7 How does TVA communicate with state, regional, and local officials concerning TVA's programs and activities?

(a) For those programs and activities covered by a state process under § 1311.6, TVA, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials, and

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) TVA provides notice to directly affected state, areawide, regional, and local entities in a state of proposed

federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order;

(2) The assistance or development involves a program or activity not selected for the state process; or

(3) The particular government entity is not part of or involved in the state process.

This notice may be made by a publication widely available in the potentially affected area or other appropriate means, which TVA in its discretion deems appropriate.

§ 1311.8 How does TVA provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, TVA gives state processes or directly affected state, areawide, regional, and local officials and entities:

(1) [Reserved]

(2) At least 60 days from the date established by TVA to comment on proposed direct federal development or federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with TVA have been delegated or when TVA provides notice directly to potentially affected state, areawide, regional, or local entities under § 1311.7(b).

§ 1311.9 How does TVA receive and respond to comments?

(a) TVA follows the procedures in § 1311.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1311.6.

(b) (1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities where there is no state process recommendation; however, these officials or entities may submit comments directly to TVA for TVA's consideration.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to TVA.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments to TVA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to TVA by the single point of contact, TVA follows the procedures of § 1311.10 of this Part.

(e) TVA considers comments which do not constitute a state process recommendation submitted under these regulations and for which TVA is not required to apply the procedures of § 1311.10 of this Part, when such comments are provided by a single point of contact or directly to TVA by a state, areawide, regional, or local government.

§ 1311.10 How does TVA make efforts to accommodate intergovernmental viewpoints?

(a) If a state process provides a state process recommendation to TVA through its single point contact, TVA either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact (including any regional or local office delegated a review and comment role by the state process) with written explanation of the decision in such form as TVA in its discretion deems appropriate. TVA may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunications, meeting with the single point of contact, and, as appropriate, other interested officials or offices, or other means.

(b) In any explanation under paragraph (a)(3) of this section, TVA informs the single point of contact that:

(1) TVA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) TVA's General Manager has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, the explanation is presumed to have been received five days after the date of mailing of such notification.

§ 1311.11 What are TVA's obligations in interstate situations?

(a) TVA is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that potentially impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select TVA's program or activity;

(3) In accordance with § 1311.7(b), making efforts to identify and notify the affected state, areawide, regional and local officials and entities in those states that have not adopted a process under the Order or do not select TVA's program or activity;

(4) Responding pursuant to § 1311.10 of this Part if TVA receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with TVA have been delegated.

(b) TVA uses the procedures in § 1311.10 if a state process provides a state process recommendation to TVA through a single point of contact.

§ 1311.12 [Reserved].

§ 1311.13 May TVA waive any provision of these regulations?

In an emergency, TVA may waive any provision of these regulations.

[FR Doc. 83-17090 Filed 6-23-83; 8:45 am]

BILLING CODE 8120-01-M

TENNESSEE VALLEY AUTHORITY

Intergovernmental Review of Federal Financial Assistance and Direct Federal Development Program and Activities; Program and Activity Inclusions

AGENCY: Tennessee Valley Authority.

ACTION: Notice of program and activity inclusions.

SUMMARY: This notice set forth the list of those TVA Federal financial assistance and direct Federal development activities and programs which are subject to TVA's intergovernmental review regulations published elsewhere in this Federal Register and to be codified at 18 CFR Part 1311.

FOR FURTHER INFORMATION CONTACT: Richard Ginn, Economic and Community Development, Tennessee Valley Authority, 2E 55 Old City Hall, Knoxville, Tennessee 37902 (615/632-6605).

SUPPLEMENTARY INFORMATION: In today's **Federal Register**, TVA is publishing its final regulations providing for the intergovernmental review of TVA's Federal financial assistance and direct Federal development programs and activities. These regulations implement Executive Order 12,372 and the applicable provisions of section 401 of the Intergovernmental Corporation Act of 1968 and will assist TVA in carrying out its responsibilities under the TVA Act.

TVA's regulations contemplate the development of a State process which will review and comment on certain of TVA's programs and activities that are subject to the regulations and that the State process chooses to review. TVA's regulations also identify certain exclusions from the regulations. Subject to those exclusions, the following categories of TVA's Federal financial assistance and direct Federal development programs and activities are subject to TVA's intergovernmental review regulations and may be chosen by a State process for review:

Direct Federal Development

1. Disposal or acquisition of land, landrights, or mineral rights for major industrial, recreational, or commercial use or transfer of land to public entities for major public projects (*e.g.*, waste water treatment, public recreation ports, and highways).

2. New water control dam and reservoir construction-related activities.

3. Reservoir water quality and land management plans.

4. Major energy demonstrations.

Economic and Technical Demonstrations and Assistance

1. Major economic and community development demonstrations:

—Special opportunity program
—Minority economic development program
—Floodplain management program
—Navigation development program
—Existing industries programs

2. Major agricultural and chemical development demonstrations:

—Chemical development program
—National fertilizer program
—Agricultural programs

3. Major natural resource demonstrations.

TVA will continue to coordinate its programs and activities (whether or not subject to TVA's intergovernmental review regulations) in the many other ways it presently coordinates its actions.

W. F. Willis,

General Manager.

[FR Doc. 83-17091 Filed 6-23-83; 8:45 am]

BILLING CODE 8120-01-M

federal register

Friday
June 24, 1983

Part XXIX

Veterans Administration

Intergovernmental Review of the Veterans Administration Programs and Activities; Final Rule

VETERANS ADMINISTRATION

38 CFR Part 40

Intergovernmental Review of the Veterans Administration Programs and Activities

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Veterans Administration (VA). Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also include sections satisfying the requirements of section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond S. Blunt, Director, Office of Program Planning and Evaluation (07), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 389-2608.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of January 24, 1983 (48 FR 3290) the Veterans Administration, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Executive Order.

Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The VA, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 171010) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the VA's rulemaking docket, the VA received approximately 160 comments on government-wide issues during the comment period. In addition, the VA received 5 comments specifically related to the inclusion or exclusion of the VA's programs from the coverage of the Order or other issues pertaining only to the VA.

In preparing the final rule, the VA considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the VA has made several changes from the proposed rule. The VA is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wished to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The VA's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The VA has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the VA and allow State and local governments to establish cost effective consultation procedures. For this reason, the VA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the VA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 38 CFR Part 40

Intergovernmental relations, States, Veterans.

Approved: June 14, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the

Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
—A means of consulting with local officials; and,
—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and send OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies. The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an "accommodate or explain" response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the VA altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
40.1	40.1
40.2	40.2
40.3(a)	40.3
40.3(b)	
40.4	40.4
40.5(a)	40.6(b)
40.5(b)	40.6(c)
40.5(c)	40.6(d)
40.6(a)	40.8(b)
40.6(b)	
40.6(c)	40.8(a)
40.6(d)	
40.6(e)	40.9
40.7(a)	40.7
40.7(b)	
40.8	40.11
40.9	
40.10	40.10(a)
	40.10(b)
	40.13

Certain sections of the final rule not listed in this table [§§ 40.5, 40.6(a), 40.7(b), and 40.8(c)] are new.

Section 40.1 Purpose.

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to satisfying some of its requirements. Nor did the NPRM expressly satisfy section 204 of the Demonstration Cities and Metropolitan Development Act.

The text of sections 401 and 204 are printed in the Department of Agriculture final rule published elsewhere in this issue (See Supplementary Information Section of USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as

section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Subsection (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the VA's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The VA, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the VA and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the VA is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

(38 U.S.C. 4231(b))

Section 40.2 Definitions.

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The VA does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the VA would not use the term in any but its commonly understood sense.

The VA chose not to include a definition of "direct federal development" or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The VA also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 40.10. In this section, the Administrator accepts the state process recommendation or reaches a mutually agreeable solution. If the VA does not provide an accommodation in one of these two ways, it must provide an explanation. Since the VA believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the VA considered whether to include a definition of the term "state process recommendation." The VA concluded that a definition of this term would not materially help clarify those situations in which the VA has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

(38 U.S.C. 4321(b))

Section 40.3 Programs and activities.

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists or programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). Many national security actions, even those affecting state and local jurisdictions, involve classified information. It is meaningless to expect state and local review of national security matters, for example, when access to the plans or documents for the proposed federal action is not possible for national security reasons. It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the VA's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the VA believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. However, in response to comments, the VA has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the VA is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and

Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The VA will seek public comment on proposed future program or activity exclusions as these occur.

(38 U.S.C. 4231(b))

Section 40.4 General.

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

(38 U.S.C. 4231(b))

Section 40.5 Federal interagency coordination.

Some comments, including those suggesting a federal single point of contact, asked the VA and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The VA believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the VA is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Administrator, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the VA regarding programs and activities covered under these regulations.

(38 U.S.C. 4231(b))

Section 40.6 Selection of programs and activities.

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 40.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The VA believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the VA does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (b) and (c), respectively, of § 40.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the VA to establish deadlines for states to inform the Administrator of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid, having on short notice to make midstream changes in coordination procedures. In addition, the VA has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 40.7, discussed below.

(38 U.S.C. 4231(b))

Section 40.7 Communicating with State and local officials concerning VA's programs and activities.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The VA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The VA may also take the initiative at any time to contact any interested person or entity about one of the VA's programs or activities. Further, the VA need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the VA notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The VA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the VA communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The VA will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the VA should be contacted for more information.

(38 U.S.C. 4231(b))

Section 40.8 Commenting on proposed Federal financial assistance and direct Federal development.

More commenters—over a third of the total—addressed § 40.6(c) of the NPRM (redesignated § 40.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Administrator would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the VA has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Administrator will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the VA will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional, and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 40.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the VA have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The VA is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The VA encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 40.6 of the NPRM has been dropped. A new § 40.9 of the final rule describes how the Administrator receives and responds to comments.

(38 U.S.C. 4231(b))

Section 40.9 Comment receipt and response to comments.

This new section replaces § 40.6(e) of the NPRM and elaborates in substantially greater detail the Administrator's obligations concerning the receipt of and response to comments. Section 40.6(e) had provided that the Administrator would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the VA's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the VA has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the VA whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The VA is concerned only that the single point of contact communicate those comments and recommendations to the VA.

Paragraph (a) obligates the Administrator to follow the "accommodate or explain" procedures of § 40.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the VA.) If these conditions are not met, the Administrator will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's

Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Va will always fully consider all comments it receives under these regulations.

The VA's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the VA's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the VA will respond as provided in § 40.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the VA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that that differ from the state process recommendation, all officials and entities within a state are assured that comments differ from the state process recommendation on a particular program or project will be seen and considered by the VA.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the VA before the review and comment period ends. These entities may also choose to send their comments directly to the VA concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the VA all comments received concerning a selected program or activity that differs from a state process recommendation. This requirement will ensure that, as section(s) 401 and 204 specify, the VA considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the VA makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments either to the applicant or to the VA. The VA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the VA. The VA deliberated whether in this rule to require applicants to transmit all comments they had received. The VA decided not to impose such a requirement in this rule but expects applicants to do so. The VA retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the VA's obligation to consider all the comments it receives from state, areawide, regional, and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the VA. This obligation derives directly from section(s) 401 and 204.

A number of commenters suggested that the VA and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the VA recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the VA does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind that may have an adverse affect upon the applicant and other statutory requirements. The VA believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the VA will expect the applicant to forward those comments with its application to the VA. However, this does not obviate the necessity for transmitting the state process recommendation to the VA through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the VA. Moreover, because the applicant for the VA's grants will be the state in each instance, the VA does not anticipate the problems raised by the commenters

(38 U.S.C 4231(b))

Section 40.10. Make efforts to accommodate intergovernmental concerns.

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the VA through a single point of contact, the VA becomes obligated to "accommodate or explain." This means that the VA need not "accommodate or explain" comments that (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The VA will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting

that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the VA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the VA will always send a written explanation of the nonaccommodation.

As under the proposed rule, the VA will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the VA believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The VA believes that ten days will be adequate time for the state process to formulate a position if the issue is sufficiently important within the state.

The VA has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the VA has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the VA sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the VA will be free to begin carrying out its decision on the sixteenth day after the day the VA sends the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the VA will make an effort to be as responsive as practicable consistent with the VA's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

(38 U.S.C. 4231(b))

Section 40.11 Interstate.

This section is based on § 40.8 of the NPRM. One feature of the NRPM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases.

The VA received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The VA does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the VA's interest to have affected states mutually agree on the VA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the VA will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The VA believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, subparagraph (a)(3) now specifically mentions designated areawide entities among those which the VA will make efforts to notify in interstate situations. OMB will periodically provide the VA with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the VA if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

Section 40.12 [Reserved]

(38 U.S.C. 4231(b))

Section 40.13 Waiver.

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The VA is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the VA uses the emergency waiver provision, the VA will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the VA will keep records of all situations in which the emergency waiver was used.

(38 U.S.C. 4231(b))

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there were several other comments made to the VA to which the VA would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The VA wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the VA's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB does not intend to have day-to-day operational

responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of the VA are responsible to the Administrator, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the VA and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The VA will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the VA will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the VA will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The categories of exclusions were prepared prior to the NPRM's to help agencies identify which program or activities should be subject to the provisions of E.O. 12372. Three categories of exclusions are presented generic, class, and individual. Subcategories list the types of programs or activities covered within each category.

To help in the identification, two examples of inclusion—programs and activities subject to the provisions of the Executive Order—are also described. These are not the only programs and activities subject to the Executive Order. These examples are presented because related programs and activities are covered in the class exclusion category.

1. *Generic Exclusions:* Those programs or activities excluded by previously announced administration policy are:

a. Proposed federal legislation, regulations, and budget formulation.

b. Direct payments to individuals. [See also 2d.]

c. Classified programs or activities where formal consultation would endanger national security.

d. Financial transfer for which federal agencies have no funding discretion or direct authority to approve specific sites or projects. (Examples include):

(1) General Revenue Sharing;

(2) Payments in lieu of taxes;

(3) Funds, allocated by formula, from sale receipts or proceeds from products/resources on federal lands;

(4) Block grants which are characterized by;

(a) Substantial flexibility being given state and local governments to allocate funds among different areas of effort and between state and locally derived priorities; and

(b) An absence of requirements that the recipient submit satisfactory plans or proposals for the use of these grant monies before the funds are provided.

e. Programs are activities directly administered by a federally recognized tribal government.

2. *Class Exclusions:* Those additional activities or programs determined not to be within the definition of financial assistance, direct federal development, or federal licensing or permitting under the Executive Order and thereby excluded are:

a. Certain financial transactions such as: standard procurement contracts; letter contracts; basic ordering agreements; purchase orders; joint ventures; job orders; acceptance of offers; operating funds for government-owned/contractor-operated facilities (GOCO); subawards under contracts, grant, or cooperative agreements; public utility contracts; consulting services commodity purchases; payment of claims; leases and easements of a non-major nature; purchase of notes, stock, or bonds, and land grants.

b. Research, development, and demonstration other than that specified in the description of inclusions below.

c. Criminal or civil enforcement matters.

d. Direct financial assistance between the federal government and a non-governmental party such as a non-profit organization, business, corporation, association, private school or university. However, certain research, development, and demonstration awards to such non-governmental entities may be included (see 4 below). (A governmental entity is any state; independent state organization, board or commission; general purpose local government; special purpose local or regional government; council of government; non-profit organization established by state law or local ordinance exclusively to provide a governmental service and the substantial portion of the funding for which is federal. State and municipal colleges and universities are considered a non-governmental entity.

Programs or activities with eligible recipients who may be either governmental or non-governmental entities: Some programs or activities have as eligible recipients both governmental and non-governmental entities, including individuals and private section organizations. Under this paragraph programs or activities providing assistance to non-governmental entities can be excluded. The issue raised was whether such a program or activity should be excluded in its entirety because some of the potential recipients would qualify if for an exclusion. Our determination is that such a mix of recipients does not, by itself, allow the exclusion of a program or activity. Instead, agencies may choose either of two alternatives: 1) to include these nongovernmental entities within the scope and subject some to the state process by not excluding the program, or, 2) to exempt transactions with nongovernmental entities from the intergovernmental review and consultation requirements by referencing such as exemption in their rulemaking.

e. Academic training and institutional aid grants; receipts from federally financed fellowships; scholarships; and student loans by institutions of higher education.

f. Federal rate-setting for utility services provided to state or local governments by the Federal Government.

g. A non-governmental entity's consultation with state or local government officials or securing state or local government review, approval, or certification, as a condition of receiving a federal or federally authorized license or permit.

3. *Individual Exclusions:* Those programs or activities that may be excluded on request of a federal agency. Requests for exclusions will be evaluated against the following qualifying factors and criteria.

a. A federal constitutional or statutory preemption precludes any state or local government jurisdiction over or responsibility for the individual federal program or activity, and recommendations or views of state or local governments can have little or no bearing on federal decisions in this area;

b. Meaningful consultation for the program or activity would breech financial, business, or trade secret confidentiality required by federal statute;

c. Affects other countries, particularly on matters of common interest to the United States and Canada or Mexico, and the consultation requirements of the Executive Order would interfere with the conduct of foreign policy;

d. Intergovernmental review consistent with the Executive Order would substantially impede the achievement of Presidentially or Congressionally established national goals.

4. Selected Examples of Included Programs and Activities: These programs and activities are considered as being within the scope of the Executive Order and subject to its intergovernmental review provisions.

a. The following forms of federal assistance of financial transactions with government entities; grants; cooperative agreements; subsidies; loan guarantees; insurance; technical assistance; expert information or counseling; property donations; real property acquisition or disposal; including obtaining major leases or easements; program or activities (other than General Revenue Sharing) receiving an exception to the provisions of the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224.

b. A research, development, or demonstration program or activity;

(1) which has a unique geographic focus and is directly relevant to the governmental responsibilities of a state or local government within that geographic area; or

(2) which necessitates the preparation of an Environmental Impact Statement under NEPA; or

(3) which is to be newly initiated at a particular site or location and does not necessitate the preparation of an Environmental Impact Statement, but requires unusual measures to limit the possibility of adverse exposure or hazard to the general public (for example: special protective containment of shielding facilities or air, land, or water buffer zones).

The VA announced in the **Federal Register** on January 24, 1983, that it would exclude certain programs, giving the basis for the exclusions.

Of the 120 comments received by the VA, five commenters specifically requested that the loan guaranty program be included within the scope of the regulations implementing Executive Order 12372. After considering the comments and taking a second look at the criteria for inclusion of programs and activities under these regulations, as well as section of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231), the VA has determined that the primary beneficiaries of the program, individual veterans, will be best served by its exclusion. The VA Loan Guaranty program involves a VA guaranty to the lender of a portion of a veteran's loan to purchase the home of his or her choice. The VA guaranty is effective when the construction of the home is finished and the veterans' individual loan is closed. The VA does not provide any insurance or guaranty of the builders project mortgage or construction loan.

In addition, the decision to exclude the loan guaranty program will not undermine the intent of the Executive Order 12372 as explained in the VA's NPRM. Moreover VA statistics show that of the more than one million housing starts during 1982, the VA guaranteed 31,176 loans. Therefore, only about 3% of single family residential homes which were built last year resulted in VA guaranteed loans. Since conventional loans were not subject to clearinghouse review and the overwhelming majority of new construction involves conventional loans, the impact of clearinghouse review on new homes was minimal.

In most instances the only reason builders sought VA approval of proposed subdivisions was to have available an additional form of financing to supplement the conventional loans which form the major source of today's financing. Because of the small volume of VA new construction loans the witholding of VA financing from a subdivision does not affect a builder's decision to proceed with construction. Typically, the homes will be built regardless of VA involvement. Experience has shown that most comments received from clearinghouses were not of major significance. Moreover, the paperwork and delays (a minimum of 30 days) involved in clearinghouse review was often perceived as too costly by most builders who, as a result, elect to construct the home without VA subdivision approval. An election to not seek VA approval means that such homes will not be eligible for VA loan purposes and, therefore, veterans cannot use their housing benefit to purchase homes in the subdivision. Builders compete with each other for sales and any additional burdens placed on builders participating in the VA home loan program usually have results which are counterproductive to veteran purchases, that is, the builder invariably elects not to seek VA approval.

The VA recognizes the impact of housing construction upon a community. The VA believes that the review and comment process contemplated under these regulations, will not provide the community with the kind of planning mechanisms that its present zoning ordinances, water and sewage laws and building permits would provide. However, VA is concerned that the inclusion of the loan guaranty program will be detrimental to veterans. Therefore, in order to carry out the VA's mission, i.e., to guarantee housing loans if made by an approved lender, state, or financial institution for the purpose of the purchase of residential housing by the eligible veteran, the VA believes that an exclusion of the program is advisable.

The VA also received a few comments regarding our decision to utilize dollar and acreage thresholds to identify direct development projects included within the scope of the regulations. As with all exclusions, the VA took into consideration the Congressionally established national goals of the VA and the President's Federalism initiative. The direct development programs of the VA fall within three categories: (1) construction, alteration, improvement of hospitals (2) acquisition and disposition of property, and (3) establishment and maintenance of cemeteries for the Nation's deceased veterans. Of the three, only categories 1 and 3 have been identified by the VA as candidates for any exclusion. Category 2 is completely within the scope.

All building additions or new structures meeting the following criteria are included within the scope. The dollar threshold is applicable only to inpatient care projects; exceeding 2 million dollars; and in cases where the bed capacity increases by 25; modifies the primary function of the facility, or provides a major new medical care service. During the period of the A–95 clearinghouse review process, the commenters responded positively to the threshold approach, because it allowed them to concentrate on those projects that they found to have an impact on the community. Moreover, the threshold of 2 million is certainly not limiting in light of the present and future construction costs of medical facilities. The threshold of 20 acres for the expansion of burial sites

was also successful under the A-95 clearinghouse review process.

Accordingly, VA will continue the concept of using thresholds to define the scope of some of our direct development programs.

The Veterans Administration is amending Title 38, Code of Federal Regulations by adding a new Part 40, to read as follows:

PART 40—INTERGOVERNMENTAL REVIEW OF VETERANS ADMINISTRATION PROGRAMS AND ACTIVITIES

Sec.
40.1 Purpose.
40.2 Definitions.
40.3 Programs and activities.
40.4 General.
40.5 Federal interagency coordination.
40.6 Selection of programs and activities.
40.7 Communicating with State and local officials concerning VA's programs and activities.
40.8 Commenting on proposed Federal financial assistance and direct Federal development.
40.9 Comment receipt and response to comments.
40.10 Making efforts to accommodate intergovernmental concerns.
40.11 Interstate.
40.12 [Reserved]
40.13 Waiver.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 40.1 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs", issued on July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to improve the internal management of the VA, and are not intended to create any right or benefit enforceable at law by a party against the VA or its officers.

(38 U.S.C. 4231(b))

§ 40.2 Definitions.

For the purposes of §§ 40.1 through 40.13, the following definitions apply:

(a) "VA" means the Veterans Administration.

(b) "Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

(c) "Administrator" means the Administrator of Veterans Affairs of the Veterans Administration or an official or employee of the VA acting for the Administrator under delegation of authority.

(d) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

(e) "Emergency" means a sudden, urgent, unforeseen situation in which immediate action is needed to prevent or respond to significant harm to life or property. Harm to property would include damage to the environment.

(f) "Unusual circumstances" means the end of a fiscal year, a statutory deadline or any other circumstance making it impracticable for the agency to provide 60 days for comment.

(g) "Affected" means for purposes of interstate situations those States physically affected by the specific plans and projects.

(38 U.S.C. 4231(b))

§ 40.3 Programs and activities.

The Administrator publishes in the **Federal Register** a list of the VA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(38 U.S.C. 4231(b))

§ 40.4 General.

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the VA.

(b) If a State adopts a process under the order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(5) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

(38 U.S.C. 4231(b))

§ 40.5 Federal interagency coordination.

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the VA regarding programs and activities covered under these regulations.

(38 U.S.C. 4231(b))

§ 40.6 Selection of programs and activities.

(a) A State may select any program or activity published in the **Federal Register** in accordance with § 40.3 of this part, for intergovernmental review under these regulations. Each State, before selecting programs and activities shall consult with local elected officals.

(b) Each State that adopts a process shall notify the Administrator of the VA's programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with local elected officials regarding the change. The VA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities.

after the Administrator is notified of its selections.

(38 U.S.C. 4231(b))

§ 40.7 Communicating with State and local officials concerning VA's programs and activities.

The Administrator provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(a) The State has not adopted a process under the order; or

(b) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the **Federal Register** or other appropriate means, which the VA in its discretion deems appropriate.

(38 U.S.C. 4231(b))

§ 40.8 Commenting on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Administrator gives State processes or State, areawide, regional and local officials and entities at least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the VA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(38 U.S.C. 4231(b))

§ 40.9 Comment receipt and response to comments.

(a) The Administrator follows the procedures in § 40.10 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 40.6.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the VA.

(d) If a program or activity is not selected for a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the VA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to the VA by the single point of contact, the Administrator follows the procedures of § 40.10 of this part.

(e) The Administrator considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 40.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the VA by a commenting party.

(38 U.S.C. 4231(b))

§ 40.10 Making efforts to accommodate intergovernmental concerns.

(a) If a State process provides a State process recommendation to the VA through its single point of contact, the Administrator either—

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The VA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

(38 U.S.C. 4231(b))

§ 40.11 Interstate.

(a) The Administrator is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in States which have adopted a process and which select the VA's program or activity.

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the order or do not select the VA's program or activity;

(4) Responding pursuant to § 40.10 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the VA have been delegated, or

(b) The Administrator uses the procedures in § 40.10 if a State process provides a State process recommendation to the VA through a single point of contact.

(38 U.S.C. 4231(b))

§ 40.12 [Reserved]

§ 40.13 Waiver.

In an emergency, the Administrator may waive any provision of these regulations.

(38 U.S.C. 4231(b))

[FR Doc. 83-17068 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XXX

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC82-3031	Nov. 12, 1982.
Florida:	
FL83-1016	Apr. 1, 1983.
FL82-1083	Nov. 19, 1982.
Illinois:	
IL83-2035	Apr. 8, 1983.
IL82-2003	Mar. 5, 1982.
Louisiana: LA82-4053	Nov. 5, 1982.
Ohio:	
OH83-2039	May 13, 1983.
OH83-2006	Feb. 11, 1983.
OH83-2013	Feb. 25, 1983.
OH83-2047	June 10, 1983.
Nebraska: NE83-4025	Apr. 1, 1983.
New Mexico: NM83-4036	May 13, 1983.
Mississippi: MS83-1015	Apr. 1, 1983.
Pennsylvania:	
PA82-3008	Feb. 26, 1982.
PA81-3041	July 8, 1981.
Rhode Island: RI81-3042	Aug. 15, 1981.
Tennessee: TN82-2057	Nov. 19, 1982.
Texas:	
TX81-4064	Aug. 7, 1981.
TX83-4005	Jan. 7, 1983.
TX83-4006	Do.
TX83-4007	Do.
TX83-4026	Apr. 8, 1983.
TX83-4042	June 3, 1983.
Virginia: VA81-3015	Mar. 6, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	
FL82-1072(FL83-1041)	Oct. 29, 1982.
FL82-1073(FL83-1042)	Do.
FL82-1074(FL83-1043)	Do.
FL82-1075(FL83-1044)	Do.
FL82-1076(FL83-1045)	Do.
FL82-1077(FL83-1046)	Do.
FL82-1078(FL83-1047)	Do.
FL82-1079(FL82-1048)	Do.
FL82-1080(FL83-1049)	Do.
FL82-1081(FL83-1050)	Do.
Missouri: MO83-4021(MO83-4047)	Mar. 18, 1983.
South Carolina:	
SC79-1038(SC83-1051)	Feb. 23, 1979.
SC79-1048(SC83-1052)	Mar. 16, 1979.
Texas: TX81-4052(TX83-4048)	July 10, 1981.

Signed at Washington, D.C., this 17th day of June 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. DC82-3031-MOD. #9
(47 FR 51304-November 12, 1982)
District of Columbia:Maryland Montgomery & Prince Georges Counties;& DC Training School Virginia-Independent City of Alexandria:Arlington; & Fairfax Counties.

CHANGE:
Change Modification #7 published on June 17,1982 to read Modification #8
Change Modification #6 published on June 10,1982 to read Modification #7

	Basic Hourly Rates	Fringe Benefits

DECISION NO. FL83-1016—MOD. # 3
(April 1, 1983 - 48 FR 14307)
DADE COUNTY, FLORIDA
BUILDING CONSTRUCTION

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$ 17.73	2.70

DECISION NO. FL82-1083 — MOD. #4
(November 1982 in 47 FR 52317)
CAPE CANAVERAL AFS, PATRICK AFB, KENNEDY SPACE FLIGHT CENTER, & MELABAR RADAR SITE in BREVARD & VOLUSIA COUNTIES in FLORIDA.
BUILDING, HEAVY, & HIGHWAY CONSTRUCTION

CHANGE:

	Basic Hourly Rates	Fringe Benefit
Sheet Metal Workers	$ 13.95	1.68+ 3 %

MODIFICATIONS P. 2

DECISION NO. IL83-2035 - MOD. #1
(48 FR 15413 - April 8, 1983)
Bureau, Carroll, Henry, JoDaviess, Lee, Ogle, Rock Island, Stephenson, Whiteside, & Winnebago Cos., Illinois

Omit:
Laborers for Areas 2, 3 & 4

Add:

	Basic Hourly Rates	Fringe Benefits
Laborers:		
Area 2:		
Group 1	$14.04	$1.915
Group 2	14.29	1.915
Area 3:		
Group 1	13.04	2.915
Group 2	13.29	2.915
Area 4:		
Group 1	13.04	2.915
Group 2	13.29	2.915

LABORERS CLASSIFICATIONS FOR AREAS 2, 3 & 4

GROUP 1: Common; Carpenter Tender; Tool Cribmen; Firemen or Salamander Tender; Gravel Box Men, Dumpmen & Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Landscaper; Unloading Explosives; Laying of Sod; Planting of Trees; Removal of Trees; Asphalt Workers with Machine & Layers; Asphalt Plant Laborers; Wrecking; Fireproofing; Driving of Stakes, Stringlines for all Machinery; & Window Cleaning
GROUP 2: Handling of Any Materials with any Foreign Matter Harmful to Skin or Clothing; Track; Cement Handler; Chloride Handler; Unloading & Laborers with Steel Workers & Re-Bars; Concrete Workers Wet; Tunnel Tenders in Free Air; Batch Dumper; Mason Tender; Kettle & Tar Men; Tank Cleaner; Plastic Installer; Scaffold Worker; Motorized Buggies or Motorized Unit Used For Wet Concrete or Handling of Building Materials; Laborers with De-Watering Systems; Sewer Workers plus Depth; Vibrator Operators; Cement Silica, Clay, Fly Ash, Lime & Plasters, Handlers (Bulk or Bag); Cofferdam Workers Plus Depth; Concrete Paving, Placing, Cutting & Tying of Reinforcing; Deck Hand, Dredge Hand and Shore Laborers; Bankman on Floating Plant; Grade Checker; Power Tools; Front End Man on Chip Spreader; Caisson Worker Plus Depth; Gunnite Nozzle Men; Lead Man on Sewer Work; Welders, Cutters, Burners & Torchmen; Chainsaw Operators; Jackhammer & Drill Operators; Layout Man and/or Tile Layer; Steel Form Setter - Street & Highway; Air Tamping Hammermen; Signal Man on Crane; Concrete Saw Operator; Screenman on Asphalt Pavers; Tending Masons with Hot Material or Where Foreign Materials are used; Mortar Mixer Operator; Multiple Concrete Duct - Leadman; Lutenan; Asphalt Raker; Curb Asphalt Machine Operator; Ready Mix Scaleman, Permanent, Portable or Temporary Plant; Laborers Handling Masterplate or similar Materials; Laser Beam Operator; Concrete Burning Machine Operator; Coring Machine Operator; Plaster Tender; Underpinning and Shoring of Buildings; Pump Men; Manhole and Catch Basin; Dirt & Stone Tamper; Hose Men on Concrete Pump

DECISION NO. IL82-2003 - MOD. #7
(47 FR 9659 - March 5, 1982)
Adams, Bond, ... Winnebago, & Woodford Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 2	$16.50	$2.70
Boilermakers:		
Area 2	18.40	5.00
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 3	15.89	2.81
Carpenters; Lathers; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 4	15.13	3.25
Cement Masons & Plasterers:		
Area 3:		
Cement Masons	14.95	3.15
Plasterers	14.52	2.15
Electricians:		
Area 4	17.48	2.16
Ironworkers:		
Area 4	17.00	4.375
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 4	15.20	2.40
Painters:		
Area 3:		
Brush; Roller	15.39	2.45
Structural Steel	15.64	2.45
Spray	15.94	2.45
Sandblasting	14.39	2.45
Pipefitters; Plumbers; & Steamfitters:		
Area 3	17.36	2.25
Roofers:		
Area 3	16.97	1.68
Sheet Metal Workers:		
Area 3	15.93	3.23
Sprinkler Fitters	16.67	2.82
Omit:		
Laborers for Areas 24, 25 & 26		
Power Equipment Operators for Boone, Bureau (E. of Rte. #26), Carroll, DeKalb, JoDaviess, LaSalle, Lee, Livingston, Ogle, Putnam (E. of Illinois River), Stephenson, Whiteside (E ½), & Winnebago Cos.		
Add:		
Carpenters; Lathers; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 4:		
Millwrights	$17.55	$3.30
Laborers:		
Area 24:		
Group 1	13.04	2.915
Group 2	13.29	2.915
Area 25:		
Group 1	13.04	2.915
Group 2	13.29	2.915
Area 26:		
Group 1	14.04	1.915
Group 2	14.29	1.915
Power Equipment Operators:		
Boone, Bureau (E. of Rte. #26), Carroll, DeKalb, JoDaviess, LaSalle, Lee, Livingston, Ogle, Putnam (E. of Illinois River), Stephenson, Whiteside (E ½), & Winnebago Cos.:		
Class 1	17.10	4.50
Class 2	15.80	4.50
Class 3	14.20	4.50
Class 4	12.60	4.50

DECISION NO. IL82-2003 (Cont'd)

LABORERS CLASSIFICATIONS FOR AREAS 24, 25 & 26

GROUP 1: Common; Carpenter Tender; Tool Cribmen; Firemen or Salamander Tender; Gravel Box Men, Dumpmen & Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Landscaper; Unloading Explosives; Laying of Sod; Planting of Trees; Removal of Trees; Asphalt Workers with Machine & Layers; Asphalt Plant Laborers; Wrecking; Fireproofing; Driving of Stakes, Stringlines for all Machinery; & Window Cleaning

GROUP 2: Handling of Any Materials with any Foreign Matter Harmful to Skin or Clothing; Track; Cement Handler; Chloride Handler; Unloading & Laborers with Steel Workers & Re-Bars; Concrete Workers Wet; Tunnel Tenders in Free Air; Batch Dumper; Mason Tender; Kettle & Tar Men; Tank Cleaner; Plastic Installer; Scaffold Worker; Motorized Buggies or Motorized Unit Used For Wet Concrete or Handling of Building Materials; Laborers with De-Watering Systems; Sewer Workers plus Depth; Vibrator Operators; Cement Silica, Clay, Fly Ash, Lime & Plasters, Handlers (Bulk or Bag); Cofferdam Workers Plus Depth; Concrete Paving, Placing, Cutting & Tying of Reinforcing; Deck Hand, Dredge Hand and Shore Laborers; Bankmen on Floating Plant; Grade Checker; Power Tools; Front End Man on Chip Spreader; Caisson Worker Plus Depth; Gunnite Nozzle Men; Lead Man on Sewer Work; Welders, Cutters, Burners & Torchmen; Chainsaw Operators; Jackhammer & Drill Operators; Layout Men and/or Tile Layer; Steel Form Setter - Street & Highway; Air Tamping Hammermen; Signal Man on Crane; Concrete Saw Operator; Screenman on Asphalt Pavers; Tending Masons with Hot Material or Where Foreign Materials are used; Mortar Mixer Operator; Multiple Concrete Duct - Leadman; Lutemen; Asphalt Raker; Curb Asphalt Machine Operator; Ready Mix Scaleman, Permanent, Portable or Temporary Plant; Laborers Handling Masterplate or similar Materials; Laser Beam Operator; Concrete Burning Machine Operator; Coring Machine Operator; Plaster Tender; Underpinning and Shoring of Buildings; Pump Men; Manhole and Catch Basin; Dirt & Stone Tampers; Hose Men on Concrete Pump

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

CLASS 1 - Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft.-and under; Concrete Placer; Concrete Pump (Truck Mounted); Concrete Tower; Cranes; Cranes, Hammerhead; Creter Crane; Crusher, Stone, etc; Derricks; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Highlift Shovels or Front Endloader 2¼ yd. and Over; Hoists, Elevators, Outside Type Rack and Pinion and Similar Machines; Hoists, One, Two, and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotive; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes; squeeze cretes-screw type pumps Gypsum bulker and pump;*Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck mounted); Roto Mill Grinder (36"and over); Roto Mill Grinder (less than 36"); Scoops-Tractor Drawn; Slip-Form Paver; Straddle Buggies; Tournapull; Tractor with Boom, and side boom; & Trenching Machines

Class 2 - Bobcat (over 3/4 cu. yd.); Boiler; Brick Forklift; Broom, Power Propelled; Bulldozers; Concrete Mixer (Two Bag and over); Conveyor, Portable; Forklift Trucks; Greaser Engineer; Highlift Shovels or Front Endloaders under 2¼ yd.; Hoists, Automatic; Hoists, Inside Freight Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Rollers; Steam Generators; Tractors; Tractor Drawn Vibratory Roller (Receives an additional $.50 per hour); & Winch Trucks with "A" Frame

DECISION NO. IL82-2003 (Cont'd)

POWER EQUIPMENT OPERATORS (CONT'D):

CLASS 3 - Air Compressor-Small 150 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-Large over 150; Combination-Small equipment operator; Generator-Small 50 kw and under; Generator-Large over 50kw; Heaters, Mechanical; Hoists, Inside Elevators (rheostat manual controlled); Hoists, Inside Elevators push button with automatic doors; Hydraulic Power Units (pile driving and extracting); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 small electric drill winches; Bobcat (up to and including 3/4 cu. yd); & Brick Forklift

CLASS 4 - Oilers

*Raised and Blind Hole Drill for Boone, Carroll, DeKalb, JoDaviess, Lee, Ogle, Stephenson, Whiteside (E. ½), & Winnebago Counties ONLY

DECISION NO. LA82-4053 - MOD. #14 (47 FR 50421 - 11/5/82) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers:		
Zone 2	$16.71	2.935
Electricians:		
Zone 2-Electricians	16.10	.82+3%
Cable splicers	16.60	.82+3%
Painters:		
Zone 7 - Group 1	10.05	
Group 2	10.55	
Group 3	11.05	
Lathers modified in Mod. #13 should read:		
Zone 3	13.25	.60
Zone 4:		
Calcasieu Par. Allen,Beauregard, Cameron,Jefferson Davis & Vernon Pars	13.19	1.60
	9.90	1.60

DECISION NO. OH83-2039 - MOD. #1 (48 FR 21795 - May 13, 1983) Adams, Allen,...Wood & Wyandot Cos., Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Clinton, Darke, Greene, Miami, Montgomery, Preble, & Warren (Twps. of Wayne, Clear Creek, & Franklin Twps.) Cos.:		
Electrical Communications Installers within 11 mi. radius of 3rd & Main St., Dayton	$16.98	$2.99
Electrical Communications Installers beyond 11 mi. radius of 3rd & Main St., Dayton	17.21	3.00

DECISION NO. OH83-2006 - MOD. #6 (48 FR 6459 - February 11, 1983) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 2:		
Carpenters	$14.81	$2.82
Piledrivermen	15.46	2.82
DECISION NO. OH83-2013 - MOD. #5 (48 FR 8230 - February 25, 1983) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio		
Change:		
Asbestos Workers:		
Ashtabula (Rem. of Co.) Co.	$18.44	$2.83
Boilermakers	18.855	3.705
Bricklayers; Stonemasons:		
Ashtabula Co.	16.87	3.00
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Ashtabula, Cuyahoga & Lake Cos.:		
Carpenters; Soft Floor Layers	18.45	4.36
Millwrights	18.00	4.81
Piledrivermen	18.00	4.81
Lorain Co.:		
Millwrights	18.00	4.81
Piledrivermen	18.00	4.81
Portage & Summit Cos.:		
Millwrights	18.00	4.81
Piledrivermen	18.00	4.81
Stark Co.:		
Carpenters	17.18	3.02
Millwrights; Piledrivermen	17.66	3.02
Soft Floor Layers	17.01	3.02
Cement Masons:		
Ashtabula Co.	16.87	3.00
Marble Setters; Terrazzo Workers; & Tile Setters:		
Ashtabula Co.	16.87	3.00
Plasterers:		
Ashtabula Co.	16.87	3.00

DECISION NO. OH83-2047 - MOD. #1 (48 FR 27000 - June 10, 1983) Delaware, Fairfield, Franklin, Licking, Madison, & Pickaway Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians	$8.53	

DECISION NO. MS83-1015 -- Mod. # 2 (April 1, 1983 in 48 FR 14312) HINDS COUNTY, MISSISSIPPI BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$16.20	3.315

DECISION #NE83-4025-MOD. #2 (48 FR 14313-April 1, 1983 Lancaster County, Nebraska	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	14.74	3%+1.94

DECISION #NM83-4036-Mod.#1 48FR21788 - May 13, 1983 STATEWIDE, NEW MEXICO	Basic Hourly Rates	Fringe Benefits
CHANGE:		
COMMERCIAL LINE WORK-		
AREA A:		
LINEMEN-TECHNICIANS		
ZONE I	$16.45	P
ZONE II	17.93	P
ZONE III	18.92	P
ZONE IV	20.73	P
CABLE SPLICERS		
ZONE I	18.10	P
ZONE II	19.58	P
ZONE III	20.57	P
ZONE IV	22.38	P
EQUIPMENT OPRS. (includes Helicopter operator)		
ZONE I	15.62	P
ZONE II	17.10	P
ZONE III	18.09	P
ZONE IV	19.90	P
EQUIPMENT MECHANIC (include helicopter mech.) and Powderman		
ZONE I	14.31	P
ZONE II	15.79	P
ZONE III	16.78	P
ZONE IV	18.59	P
GROUNDMAN-JACKHAMMER OPRS:		
ZONE I	11.68	P
ZONE II	13.16	P
ZONE III	14.15	P
ZONE IV	15.96	P
P--J-1/2%+$2.00		

DECISION NO. PA82-3008 - MOD. #5 (47 FR 8487 - February 26, 1982) BUCKS, CEPSTER, DELAWARE, MONTGOMERY & PHILADELPHIA COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS	14.97	4.91
CEMENT MASONS	13.00	5.54
ELECTRICIANS		
Philadelphia (Only)	19.06	3.23
IRONWORKERS:		
Structural & Ornamental		
Philadelphia (Only)	16.25	4.80
LABORERS:		
Group 1	13.05	2.55
Group 2	12.85	2.55
Group 3	12.75	2.55
Group 4	12.90	2.55
Group 5	12.65	2.55
Group 6	13.30	2.55
Group 7	13.15	2.55
Group 8	13.00	2.55
MILLWRIGHTS		
Philadelphia Only	15.17	4.91
TRUCK DRIVERS:		
Heavy and Highway Truck Drivers:		
Including Site Preparation, Paving and Utilities on Building Construction		
Class 1	11.90	2.8725
Class 2	12.00	2.8725
Class 3	12.20	2.8725
ADD:		
IRONWORKERS:		
Reinforcing	15.64	4.75

DECISION NO. PA81-3041 - MOD. #11 (46 FR 34934 - July 6, 1981) ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, BUTLER, CAMBRIA, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, CRAWFORD, ELK, ERIE, FAYETTE, FOREST, FRANKLIN, FULTON, GREENE, HUNTINGDON, INDIANA, JEFFERSON, MERCER, LAWRENCE, McKEAN, MIFFLIN, POTTER, SOMERSET, VENANGO, WARREN, WASHINGTON, WESTMORELAND CO., PA.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
HEAVY & HIGHWAY CONSTRUCTION:		
CARPENTERS		
ZONE I	14.14	28%
ZONE II	13.94	28%
CARPENTER - WELDER		
ZONE I	14.53	28%
ZONE II	14.34	28%
CARPENTER - BURNER		
ZONE I	14.33	28%
ZONE II	14.14	28%
POWER EQUIPMENT OPERATORS:		
CLASS I		
ZONE I	15.85	20½%
ZONE II	15.61	20½%
CLASS II		
ZONE I	15.63	20½%
ZONE II	15.38	20½%
CLASS III		
ZONE I	12.59	20½%
ZONE II	12.35	20½%
CLASS IV		
ZONE I	12.21	20½%
ZONE II	11.94	20½%
CLASS V		
ZONE I	12.01	20½%
ZONE II	11.77	20½%

MODIFICATIONS P. 9

DECISION NO. RI81-3042 -	Basic Hourly Rates	Fringe Benefits
MOD. #13		
(46 FR 42615 - August 15, 1981)		
Statewide, Rhode Island		
Change:		
BUILDING CONSTRUCTION:		
Electricians:		
Westerly Tp. Twps.	$16.80	4.65+ 3.5%
Laborers: Building Const.		
Laborers; Carpenter Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers	12.90	2.40
Asphalt Rakers& Adzemen; Pipe-Trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers; Riprap & Dry Stonewall Builders; Highway Stone Spreaders Pneumatic Tool Ops.; Wagon Drill Ops.; Tree Trimmers; Barco Type Jumping Tampers; Mechanical Grinder Ops.; Plasterers' Tenders; Scaffold Builders; & Mortar Mixers	13.15	2.40
Pre-cast Floor and Roof Plant Erectors	13.40	2.40
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	13.65	2.40
Blasters; Powdermen	13.90	2.40
Steamfitters	16.83	4.55
Laborers: Heavy and Highway;		
Laborers; Carpenter & Cement Finisher Tenders and Wrecking Laborers	12.90	2.40
Adzeman; Asphalt Rakers; Barco-type Jumping Tampers; Chain Saw Ops.; Concrete & Power Buggy Ops.; Concrete Saw Ops.; Demolition Burners; Fence & Guard Rail Erectors; Highway Stone Spreaders; Mason Tenders; Mechanical Grinder Ops.; Mortar Mixers; Pipelayers; Pipe-Trench Bracers; Pneumatic Tool Ops.; Riprap & Dry Stonwall Builders; Scaffold Erectors; Setters of Metal Forms for Roadways; Wagon Drill Ops.; Wood Chipper Ops.	13.15	2.40
Air Track Drill Ops.; Brick Pavers; Block Pavers; Rammers; Curb Setters	13.65	2.40
Blaterers & Powdermen	13.90	2.40

DECISION NO. TN82-2057-	Basic Hourly Rates	Fringe Benefits
Mod. #3		
(47 FR 52324 - November 19, 1982		
Shelby County, Tennessee		
Change:		
POWER EQUIPMENT OPERATORS:		
Class A	$14.285	1.40
Class B	12.64	1.40
Class C	11.745	1.40
Class D	11.31	1.40

MODIFICATIONS P. 10

DECISION NO. TX81-4064 -	Basic Hourly Rates	Fringe Benefits
MOD. #11		
(46 FR 40487 - 8/7/81)		
El Paso County, Texas		
CHANGE:		
Electricians:		
Electricians	$13.60	.80+3½%
Cable splicers	13.85	.80+3½%

DECISION NO. TX83-4005 -	Basic Hourly Rates	Fringe Benefits
MOD. #3		
(48 FR 934 - 1/7/83)		
Lubbock County, Texas		
CHANGE:		
Laborers - Group 1	7.71	.70
Group 2	7.98	.70
Group 3	7.91	.70
Group 4	8.06	.70
Group 5	8.31	.70

DECISION NO. TX83-4006 -	Basic Hourly Rates	Fringe Benefits
MOD. #6		
(48 FR 933 - 1/7/83)		
Travis County, Texas		
CHANGE:		
Plumbers & pipefitters	17.40	1.27
Marble, tile & terrazzo workers	12.75	1.35

DECISION NO. TX83-4007 -	Basic Hourly Rates	Fringe Benefits
MOD. #5		
(48 FR 932 - 1/7/83)		
Wichita County, Texas		
CHANGE:		
Asbestos workers	16.71	2.935
Elevator constructors:		
Mechanics	16.025	2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	

DECISION NO. TX83-4026 -	Basic Hourly Rates	Fringe Benefits
MOD. #3		
(48 FR 15425 - 4/8/83)		
Jefferson & Orange Cos., Texas		
CHANGE:		
Bricklayer & stonemason	19.08	2.20
Tile setters	17.57	2.20

DECISION NO. TX83-4042 -	Basic Hourly Rates	Fringe Benefits
MOD. #1		
(48 FR 25106 - 6/3/83)		
Collin,Dallas,Denton, Ellis,Grayson,Hood, Hunt,Johnson,Kaufman, Palo Pinto,Rockwall, Tarrant & Wise Cos., Texas		
CHANGE:		
Asbestos workers	$16.71	2.935
Elevator constructors:		
Mechanics	16.025	2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	
Plumbers & pipefitters:		
Zone 2	17.04	2.03

DECISION NO. VA81-3015-	Basic Hourly Rates	Fringe Benefits
Mod. #12		
(46 FR 15666-March 6,1981)		
Radford Army Ammunition Plant, Virginia		
CHANGE:		
SHEET METAL WORKERS	$13.30	1.77

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: BAY, ESCAMBIA, GULF, OKALOOSA, SANTA ROSA, & WALTON

DECISION NUMBER: FL83-1041

DATE: Date of Publication

Supersedes Decision No.: FL82-1072 dated October 29, 1982 in 47 FR 49206.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$5.78	
CONCRETE FINISHERS	5.29	
FORM SETTERS	5.00	
LABORERS:		
Asphalt Raker	4.07	
Pipelayer	5.25	
Unskilled	3.81	
IRONWORKER, Reinforcing	6.00	
TRAFFIC SIGNALIZATION MECHANIC	6.00	
TRAFFIC SIGNALIZATION INSTALLER	5.50	
TRAFFIC SIGNALIZATION LABORER	4.50	
TRUCK DRIVERS:		
Multi-Rear Axle	3.88	
Single -Rear Axle	6.00	
Lowboy	3.90	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	$ 4.27	
Asphalt Paving Machine	5.25	
Asphalt Plant	5.87	
Asphalt Screed	4.65	
Backhoe	5.00	
Bulldozer	5.21	
Crane, Derrick, or Dragline	6.80	
Earthmover	5.65	
Front End Loader--over one cubic yard	4.94	
Guardrail Erector	4.00	
Guardrail Post Driver	4.75	
Mechanic	5.40	
Motor Grader	5.65	
Oiler, Greaseman	4.08	
Piledriver	4.70	
Rollers:		
Finish	4.70	
Self-Prop.,Rubber Tire	4.02	
Scraper	4.40	
Tractor, Light	4.11	
Tractor, 80 hp or less	3.81	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: CALHOUN, FRANKLIN, HOLMES, JACKSON, LIBERTY, & WASHINGTON

DECISION NUMBER: FL83-1042

DATE: Date of Publication

Supersedes Decision No. FL82-1073 dated October 29, 1982 in 47 FR 49206.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTER	$ 5.43	
CONCRETE FINISHER	5.17	
LABORERS:		
Asphalt Raker	4.09	
Unskilled	3.65	
IRONWORKER, REINFORCING	4.50	
TRAFFIC SIGNALIZATION:		
INSTALLER	4.75	
MECHANIC	5.50	
TRUCK DRIVERS:		
Multi-Rear Axle	3.79	
Lowboy	3.80	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	4.13	
Asphalt Mixer	5.75	
Asphalt Paving Machine	5.25	
Asphalt Plant	4.34	
Backhoe	5.00	
Bulldozer	5.50	
Crane, Derrick, or Dragline	5.50	
PEO's cont'd:		
Earthmover	$ 5.65	
Front End Loader, over one cubic yard	4.50	
Guardrail Post Driver Erector	4.50	
Guardrail Erector	4.25	
Mechanic	5.41	
Motor Grader	5.48	
Oiler, Greaseman	3.75	
Rollers:		
Finish	4.68	
Rough	3.70	
Self-Prop., Rubber Tired	3.94	
Scraper	4.50	
Tractor Operator, Light	4.40	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: GADSDEN, JEFFERSON, LEON, and WAKULLA

DECISION NUMBER: FL83-1043

DATE: Date of Publication

Supersedes Decision No.: FL82-1074 dated October 29, 1982 in 47 FR 49207.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; & other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 6.08	
CONCRETE FINISHER	5.75	
LABORERS:		
Asphalt Raker	4.00	
Pipelayer	6.25	
Unskilled	3.93	
IRONWORKER, REINFORCING	6.00	
TRUCK DRIVER	4.00	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	4.75	
Asphalt Paving Machine	5.40	
Asphalt Plant	5.50	
Backhoe	4.50	
Bulldozer	4.75	
Crane, Derrick, or Dragline	6.50	
PEO's cont'd:		
Earthmover	$ 4.50	
Front End Loader	5.00	
Motor Grader	5.00	
Pavement Striping Machine	5.50	
Rollers:		
Finish	5.00	
Self-Prop. Rubber Tire	5.00	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: ALACHUA, DIXIE, GILCHRIST, HAMILTON, LAFAYETTE, LEVY, MADISON, SUWANEE, & TAYLOR

DECISION NUMBER: FL83-1044

DATE: Date of Publication

Supersedes Decision No.: FL82-1075 dated October 29, 1982 in 47 FR 49207.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension, & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 5.44	
CONCRETE FINISHER	6.00	
FORM SETTER	4.50	
LABORERS:		
Asphalt Raker	4.13	
Pipelayer	4.73	
Unskilled	4.03	
IRONWORKER, Reinforcing	5.89	
TRAFFIC SIGNALIZATION:		
INSTALLER	5.71	
MECHANIC	7.75	
TRUCK DRIVERS:		
Multi-Rear Axle	4.03	
Single-Rear Axle	4.42	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	4.15	
Asphalt Paving Machine	4.43	
Asphalt Plant	5.50	
Asphalt Screed	4.28	
Backhoe	4.50	
Bulldozer	5.00	
Crane, Derrick, or Dragline	6.44	
Earthmover	4.25	
PEO's Cont'd:		
Front End Loader	$ 4.64	
Guardrail Erector	4.25	
Guardrail Post Driver	4.75	
Lutemen	5.25	
Mechanic	5.29	
Motor Grader	4.95	
Oiler, Greaseman	4.08	
Pavement Striping Machine	6.25	
Piledriver	5.02	
Power Subg. Mixer, Self-Prop.	4.75	
Rollers:		
Finish	4.03	
Self-Prop. Rubber Tire	4.03	
Tractor Oper., Light	4.03	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: BAKER, BRADFORD, CLAY, COLUMBIA, DUVAL, FLAGLER, NASSAU, PUTNAM, ST. JOHNS, & UNION

DECISION NUMBER: FL83-1045
DATE: Date of Publication
Supersedes Decision No.: FL82-1076 dated October 29, 1982 in 47 FR 49208.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 7.01	
CONCRETE FINISHER	5.69	
FORM SETTER	4.82	
LABORERS:		
Asphalt Raker	4.94	
Pipelayer	4.81	
Unskilled	4.29	
IRONWORKERS:		
Reinforcing	5.94	
Structural	4.87	
TRAFFIC SIGNALIZATION:		
Installer	5.50	
Mechanic	6.71	
TRUCK DRIVERS:		
Lowboy	4.29	
Multi-Rear Axle	4.50	
Single-Rear Axle	4.35	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Air Tool	5.00	
Asphalt Distributor	4.74	
Asphalt Mixer	4.40	
Asphalt Paving Machine	5.00	
Asphalt Plant	5.03	
Asphalt Screed	5.03	
Backhoe	6.01	
Boom-Auger	4.75	
Bulldozer	5.54	
Concrete Curb Machine	5.75	
Concrete Paving Machine	4.91	
Concrete Paving Sub-grader	5.25	
Crane, Derrick, or Dragline	7.43	
Drilling Machine	5.00	
Earthmover	4.61	
Fence Erector	4.29	
Front End Loader, over one cubic yard	5.71	
Gradall	6.50	
Guardrail Erector	5.27	
PEO's cont'd:		
Guardrail Post Driver	$ 6.21	
Luteman	5.25	
Mechanic	5.83	
Motor Grader	5.82	
Mulching Machine	4.29	
Oiler, Greaseman	5.21	
Painter (Nozzleman)	4.50	
Pavement Striping Machine	5.98	
Piledriver	6.47	
Piledriver Leademan	7.75	
Pump	4.74	
ROLLERS:		
Finish	4.82	
Rough	4.66	
Self-Prop., Rubber Tire	4.69	
Operator	4.88	
Scraper	5.49	
Self-Prop. Power Subg. Mixer	5.00	
Sign Erector	4.50	
TRACTORS:		
Light	4.60	
Over 80 hp	4.60	
80 hp or less	4.79	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: CITRUS, HERNANDO, LAKE, MARION, PASCO, SUMTER, VOLUSIA (excluding Cape Kennedy Space Flight Center & Cape Canaveral Air Force Station).

DECISION NUMBER: FL83-1046
DATE: Date of Publication
Supersedes Decision No.: FL82-1077 dated October 29, 1982 in 47 FR 49208.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; & other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 5.69	
CONCRETE FINISHER	5.63	
FORM SETTER	4.50	
LABORERS:		
Asphalt Raker	4.66	
Pipelayer	5.17	
Unskilled	4.28	
IRONWORKERS	6.00	
TRAFFIC SIGNALIZATION:		
Installer	5.80	
Laborer	4.28	
Mechanic	9.05	
TRUCK DRIVERS:		
Multi-Rear Axle	4.38	
Single-Rear Axle	4.31	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Air Compressor	4.50	
Asphalt Distributor	4.90	
Asphalt Paving Machine	5.00	
Asphalt Plant	4.75	
Asphalt Screed	4.74	
Backhoe	6.21	
Bulldozer	5.81	
Concrete Curb Machine	5.65	
Crane, Derrick, or Dragline	7.07	
Drilling Machine	5.00	
Earthmover	4.86	
Front End Loader, over one cubic yard	5.36	
Gradall	4.80	
Guardrail Erector	4.28	
Guardrail Post Driver	4.90	
Luteman	4.75	
Mechanic	6.49	
Milling Machine	6.00	
PEO's cont'd:		
Motor Grader	$ 6.70	
Oiler, Greaseman	4.67	
Pavement Striping Machine	6.52	
Piledriver	7.50	
Pump	4.50	
ROLLERS:		
Finish	4.50	
Self-Prop. Rubber Tire	4.60	
Scraper	4.28	
Self-Prop. Aggregate Spreader	4.50	
Self-Prop. Power Subg. Mixer	5.00	
TRACTORS:		
Light	4.75	
Over 80 hp	5.00	
80 hp or less	6.85	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: BREVARD (excludes Cape Canaveral AF Station,Patrick AFB, Kennedy Space Flight Center, & Melabar Radar Site), HILLSBOROUGH, INDIAN RIVER, MANATEE, MARTIN, ORANGE, OSCEOLA, PINELLAS, POLK, ST. LUCIE, SARASOTA, & SEMINOLE.

DECISION NUMBER: FL83-1047 DATE: Date of Publication

Supersedes Decision No.: FL82-1078 dated October 29, 1982 in 47 FR 49209.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels,building structures in rest area projects& railroad construction;bascule,suspension & spandrel arch bridges; bridges; designed for commercial navigation; bridges involving marine construction; & other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 6.37	
CONCRETE FINISHER	5.87	
FORM SETTER	5.20	
LABORERS:		
Asphalt Raker	5.10	
Pipelayer	5.38	
Unskilled	4.51	
IRONWORKERS:		
Reinforcing	7.00	
Structural	7.87	
TRAFFIC SIGNALIZATION:		
Installer	6.27	
Laborer	5.58	
Mechanic	8.47	
TRUCK DRIVERS:		
Lowboy	6.40	
Multi-Rear Axle	4.62	
Single-Rear Axle	4.85	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	5.15	
Asphalt Paving Machine	5.83	
Asphalt Plant	5.10	
Asphalt Screed	5.21	
Backhoe	6.25	
Boom-Auger	4.75	
Bulldozer	5.86	
Concrete Batching Plant Scaleman	6.75	
Concrete Curb Machine	5.95	
Concrete Joint Saw	5.00	
Concrete Paving Machine	6.00	
Concrete Paving Subgrader	5.00	
Crane, Derrick, or Dragline	7.14	
Drilling Machine	5.00	
Earthmover	5.38	
Fireman	6.25	
Front End Loader (one cubic yard)	5.50	
Front End Loader (over one cubic yard)	5.58	
Gradall	6.61	
PEO's cont'd:		
Guardrail Erector	$ 4.70	
Guardrail Post Driver	5.77	
Lutesman	5.14	
Mechanic	6.22	
Milling Machine	6.70	
Motor Grader	6.45	
Oiler, Greaseman	5.30	
Pavement Striping Machine	6.91	
Piledriver	7.01	
Piledriver Leadsman	6.76	
ROLLERS:		
Finish	5.20	
Operator	4.71	
Rough	4.78	
Self-Prop., Rubber Tire	4.91	
Scraper	5.02	
Self-Prop. Power Subg. Mixer	4.75	
Sign Erector	4.55	
TRACTORS:		
Light	4.54	
Over 80 hp	4.72	
80 hp or less	5.01	
Trenching Machine	6.40	
Tug Boat Operator	7.00	
Widening Spreader	6.40	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: CHARLOTTE, COLLIER, DeSOTO, GLADES, HARDEE, HENDRY, HIGHLAND, LEE, MONROE, OKEECHOBEE

DECISION NUMBER: FL83-1048 DATE: Date of Publication

Supersedes Decision No.: FL82-1079 dated October 29, 1982 in 47 FR 49209.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, & railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; & other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 6.50	
CONCRETE FINISHERS	6.20	
FORM SETTER	4.69	
LABORERS:		
Asphalt Raker	6.00	
Pipelayer	6.00	
Powderman	11.00	
Unskilled	4.66	
IRONWORKERS, Reinforcing	6.79	
TRAFFIC SIGNALIZATION:		
Installer	6.42	
Mechanic	7.20	
TRUCK DRIVERS:		
Lowboy	6.00	
Multi-Rear Axle	4.97	
Single-Rear Axle	5.04	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS		
Asphalt Distributor	6.00	
Asphalt Mixer	6.25	
Asphalt Paving Machine	6.13	
Asphalt Plant	6.00	
Asphalt Screed	5.70	
Backhoe	6.15	
Bulldozer	5.94	
Concrete Batching Plant Scaleman	7.50	
Concrete Curb Machine	5.50	
Concrete Mixer	5.50	
Concrete Paving Machine	6.50	
Concrete Paving Subgrader	6.00	
Crane, Derrick, or Dragline	6.68	
Drilling Machine	10.40	
Earthmover	5.54	
Front End Loader, over one cubic yard	5.65	
Grademan	5.75	
Gradall	6.46	
Mechanic	6.91	
PBO's cont'd:		
Motor Grader	$ 6.82	
Oiler, Greaseman	5.03	
Pavement Striping Machine	7.00	
Piledriver Leadsman	6.25	
Piledriver Operator	9.41	
ROLLERS:		
Finish	5.65	
Operator	6.00	
Self-Prop. Rubber Tire	5.24	
Scraper	5.51	
Self-Prop. Power Subg. Mixer	5.10	
TRACTORS:		
Light	4.76	
Operator	5.04	
Tug Boat Operator	7.00	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA
DECISION NUMBER: FL83-1049
COUNTIES: BROWARD & PALM BEACH
DATE: Date of Publication
Supersedes Decision No.: FL82-1080 dated October 29, 1982 in 47 FR 49210.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension, & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; & other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 7.98	
CONCRETE FINISHER	7.76	
FORM SETTER	6.37	
LABORERS:		
Asphalt Raker	6.50	
Pipelayer	7.13	
Powderman	5.50	
Unskilled	5.13	
IRONWORKERS:		
Reinforcing	8.18	
Structural	9.50	
TRAFFIC SIGNALIZATION:		
Installer	8.00	
Mechanic	9.75	
TRUCK DRIVERS:		
Multi-Rear Axle	5.52	
Single-Rear Axle	5.33	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	5.90	
Asphalt Paving Machine	6.52	
Asphalt Screed	5.13	
Backhoe	7.57	
Bulldozer	7.00	
Concrete Curb Machine	6.50	
Concrete Paving Machine	6.65	
Crane, Derrick, or Dragline	8.53	
Drilling Machine	7.50	
Earthmover	6.24	
Front End Loader, over one cubic yard	6.66	
Gradall	7.03	
Guardrail Erector	5.13	
Guardrail Post Driver	5.46	
Mechanic	7.77	
Milling Machine	6.65	
Motor Grader	7.63	
Oiler, Greaseman	5.95	
PEO's cont'd:		
Pavement Striping Machine	$ 6.81	
PILEDRIVERS:		
Leadsman	7.65	
Operator	9.00	
ROLLERS:		
Finish	6.33	
Operator	5.13	
Rough	5.13	
Self-Prop. Rubber Tire	5.41	
Scraper	6.00	
TRACTORS:		
Light	5.25	
Operator	7.50	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: FLORIDA
DECISION NUMBER: FL83-1050
COUNTY: DADE
DATE: Date of Publication
Supersedes Decision No.: FL82-1081 dated October 29, 1982 in 47 FR 49207.
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension, & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 8.00	
CONCRETE FINISHER	7.56	
FORM SETTER	7.00	
LABORERS:		
Air Tool Operator	8.77	
Pipelayers	7.01	
Unskilled	5.65	
IRONWORKERS:		
Reinforcing	8.78	
Structural	9.10	
TRAFFIC SIGNALIZATION:		
Installer	7.25	
Mechanic	8.00	
TRUCK DRIVERS:		
Multi-Rear Axle	5.68	
Operator	5.65	
WELDERS--Rate for Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	5.67	
Backhoe	9.00	
Boom-Auger	6.00	
Bulldozer	7.62	
Crane, Derrick, or Dragline	10.47	
Drilling Machine	10.40	
PEO's cont'd:		
Front End Loader, over one cubic yard	$ 6.99	
Gradall	8.00	
Guardrail Erector	5.65	
Guardrail Post Driver Operator	5.65	
Mechanic	10.39	
Motor Grader	7.76	
Oiler, Greaseman	6.67	
Pavement Striping Machine	6.25	
Piledriver Leademan	11.18	
Piledriver Operator	13.00	
ROLLERS:		
Finish	6.50	
Rough	5.65	
Self-Prop. Rubber Tire	5.67	
Scraper	6.50	
Sign Erector	5.65	
Tractor, Light	5.65	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Missouri
DECISION NO.: MO83-4047
Supersedes Decision No. MO83-4021 dated March 18, 1983 in 48 FR 11619
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES: Statewide
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	$15.16	.53
Zone 1A	14.76	.53
Zone 2	14.61	.53
Zone 3	15.40	1.73
Zone 4	14.80	1.73
Zone 5	13.75	.53
Zone 6	15.82	.71
Zone 7	15.97	.56
Zone 7A	15.67	.86
Zone 8	14.90	1.38
Zone 9	15.05	2.07
Zone 10	15.26	2.46
CEMENT MASONS:		
Zone 1	15.075	1.95
Zone 2	14.38	2.70
Zone 3	15.17	1.95
Zone 4	12.75	
Zone 5	14.23	
Zone 6	14.85	
Zone 7	14.85	
Zone 8:		
(a) Heavy Construction	14.30	1.95
(b) Highway Construction	15.17	1.95
Zone 9	15.35	2.60
Zone 10	14.65	2.60
Zone 11:		
Projects under $700,000	14.55	2.70
Projects $700,000 & over	15.25	2.70
ELECTRICIANS:		
Zone 1:		
Electrical contracts over $30,000	15.46	.94+ 14.75%
Electrical contracts $30,000 & under	13.00	.94+ 14.75%
Zone 2	16.18	2.51+ 10%
Zone 3:		
Electrical contracts not to exceed 2000 man hours	15.18	2.51+ 10%
ELECTRICIANS: (Cont'd):		
Electrical contracts 2000 man hours & over	16.18	2.51+ 10%
Zone 4:		
Electrical contracts not to exceed 2000 man hours	15.18	2.51+ 10%
Electrical contracts 2000 man hours & over	16.18	2.51+ 10%
Zone 5:		
Electrical contracts not to exceed 2000 man hours	14.58	2.51+ 10%
Electrical contracts 2000 man hours & over	16.18	2.51+ 10%
Zone 6	15.80	1.39+ 28-1/2%
Zone 7:		
Electrical contracts over $15,000	15.80	1.39+ 28-1/2%
Zone 8:		
Electrical contracts $15,000 and under	14.78	1.39+ 28-1/2%
Zone 9:		
Electrical contracts $15,000 and under	11.43	1.39+ 28-1/2%
Zone 10:		
Electrical contracts $15,000 and under	8.07	1.39+ 28-1/2%
Zone 11	14.55	1.89+ 9%
Zone 12	15.04	1.89+ 9%
Zone 13	14.47	1.77+ 10%
Zone 14:		
Electricians	13.09	1.67+ 8%
Cable Splicers	13.44	1.67+ 8%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Zone 15:		
Electricians	$15.29	$3.11+ 10%
Cable Splicers	15.54	3.11+ 10%
IRONWORKERS:		
Zone 1	15.325	2.74
Zone 2	16.25	4.25
Zone 3	16.135	4.25
Zone 4	14.60	2.37
Zone 5	16.55	1.91
Zone 6	12.80	1.91
Zone 7	12.45	1.55
LABORERS:		
Group 1:		
Zone 1	12.23	2.90
Zone 2	11.08	2.65
Zone 3:		
(a)	14.00	1.20
(b)	13.50	1.70
Zone 4:		
(a)	13.50	1.20
(b)	13.00	1.70
Group 2:		
Zone 1	12.38	2.90
Zone 2	11.23	2.65
Zone 3:		
(a)	14.50	1.20
(b)	14.00	1.70
Zone 4:		
(a)	14.00	1.20
(b)	13.50	1.70
Group 3:		
Zone 1	12.53	2.90
Zone 2	11.38	2.65
Zone 3:		
(a)	14.75	1.20
(b)	14.25	1.70
Zone 4:		
(a)	14.25	1.20
(b)	13.75	1.70
Group 4:		
Zone 1	12.73	2.90
Zone 2	11.58	2.65
Group 5:		
Zone 1	12.98	2.90
Zone 2	11.83	2.65
LABORERS: (Cont'd):		
Zone 5: (Clay, Jackson, Platte & Ray Counties):		
Group 1	$12.02	$3.30
Group 2	12.82	3.30
Zone 6: (St. Louis City and County):		
General Laborer	14.425	1.75
Dynamiter or Powderman	14.925	1.75
LINE CONSTRUCTION:		
Zone 1:		
Lineman	18.28	1.06+ 3-1/2%
Lineman Operator	17.02	1.06+ 3-1/2%
Groundman Powderman	12.68	1.06+ 3-1/2%
Groundman	12.05	1.06+ 3-1/2%
Zone 2:		
Lineman	17.47	1.06+ 3-1/2%
Lineman Operator	16.64	1.06+ 3-1/2%
Groundman Powderman	12.10	1.06+ 3-1/2%
Groundman	11.17	1.06+ 3-1/2%
Zone 3:		
Linemen & Cable Splicer	15.74	.65+ 23.75%
Groundman-Winch Driver	11.57	.65+ 23.75%
Groundman-Driver	11.15	.65+ 23.75%
Equipment Operator	14.08	.65+ 23.75%
Groundman	11.15	.65+ 23.75%
Zone 4:		
Lineman	14.10	.45+ 11-1/2%
Groundman Equipment Operator	12.51	.45+ 11-1/2%
Groundman-Class A	8.87	.45+ 11-1/2%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Zone 5: Railroad & Cross County Transmission Lines:		
Lineman	$15.62	$1.06+ 3-1/2%
Lineman Operator	14.45	1.06+ 3-1/2%
Groundman Powderman	10.75	1.06+ 3-1/2%
Groundman	10.03	1.06+ 3-1/2%
Pole Treating Specialist	16.35	1.06+ 3-1/2%
Pole Treating Truck Driver	10.75	1.06+ 3-1/2%
Pole Treating Groundman	10.03	1.06+ 3-1/2%
Zone 6: - Telephone and Telegraph Railroad Communications and C:A.T.V. Work: Cable Splicer, Air Pressure Technician, Central Office Equipment Man and Key System Installer	10.16	.50+ 8-1/2%
Telephone Lineman, Installer, CATV Terminator and Equipment Operator (D-4 or larger Crawler, Wheel Trencher Quarter Yard Backhoe or larger)	9.73	.50+ 8-1/2%
Equipment Operator (all other small equipment)	8.50	.50+ 8-1/2%
Groundman-Winch Driver	7.61	.50+ 8-1/2%
Groundman	6.67	.50+ 8-1/2%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd):		
Zone 7 - Telephone & Telegraph & CATV Work: Cable Splicers; Air Pressure Technician, Central Office Equipment Man	$10.96	.45+3%
Telephone Lineman & Installer, Repairman, CATV Terminator, Equipment Operator (1/4 yd. Backhoe & larger & D-4 Crawler & larger)	10.39	.45+3%
Groundman-Winch Driver	7.87	.45+3%
Groundman	6.36	.45+3%
PAINTERS:		
Zone 1:		
Brush & Roller	16.04	2.08
Spray	17.04	2.08
Bridge	16.79	2.08
Zone 2:		
Brush	11.30	1.07
Spray	12.30	1.07
Sandblasting & Waterblasting	13.10	1.07
Tower, Stacks, Walkway, Cables, Tanks, and Bridges	12.80	1.07
Bridges over 500 ft. in length	16.52	1.07
Zone 3:		
Brush & Roller	11.75	2.20
Spray, Structural Steel & Sandblasting	13.00	2.20
Zone 4:		
Brush	14.25	
Bridge	15.00	
Spray, Sandblasting Operator; Work performed on bridges 75 ft. in height	15.25	
All Structural Steel over 50 ft. in height	15.00	

	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd):		
Zone 5:		
Brush	$11.85	$1.20
Spray	12.85	1.20
Steel, storage bin & tank	12.25	1.20
Bridge, stage; Belt; Bazooka	12.35	1.20
Zone 6:		
Brush, Roller	12.72	.60
Spray	13.22	.60
Zone 7:		
Brush	13.20	.20
Spray	13.70	.20
Zone 8:		
Brush	16.11	1.30
Spray	18.11	1.30
Zone 9:		
Brush	9.90	.50
Spray, Bridgeman, Steelmen	10.40	.50
Zone 10:		
Brush	13.00	
Spray	15.00	
POWER EQUIPMENT OPERATORS:		
Zone 1:		
Group I	14.10	3.92
Group II	13.85	3.92
Group III	13.15	3.92
Group IV:		
(a)	9.13	3.92
(b)	12.15	3.92
Group V	14.35	3.92
Zone 2:		
Group I	15.17	3.00
Group II	15.17	3.00
Group III	13.87	3.00
Group IV:		
(a)	13.42	3.00
(b)	15.87	3.00
(c)	16.32	3.00
(d)	17.07	3.00
(e)	14.82	3.00
Zone 3:		
Group I	15.30	2.87
Group II	15.10	2.87
Group III	14.90	2.87
Group IV	14.30	2.87
Group V	15.55	2.87
Group VI	15.80	2.87

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Cont'd):		
Zone 4:		
Group I	$14.45	$2.87
Group II	14.10	2.87
Group III	13.90	2.87
Group IV	13.05	2.87
Group V	14.70	2.87
Group VI	14.95	2.87
Zone 5:		
Group I	14.05	2.70
Group II	14.80	2.70
Group III	14.10	2.70
Group IV	12.60	2.70
Group V	14.30	2.70
Group VI	14.55	2.70
Group VII	14.80	2.70
Zone 6:		
Group I	15.00	2.70
Group II	14.65	2.70
Group III	14.45	2.70
Group IV	12.65	2.70
Group V	15.25	2.70
Group VI	15.50	2.70
Group VII	15.75	2.70
Zone 7:		
Group I	15.02	2.10
Group II	14.67	2.10
Group III	14.47	2.10
Group IV	12.42	2.10
Group V	15.27	2.10
Group VI	15.52	2.10
Group VII	15.77	2.10
Zone 8:		
Group I	15.02	2.10
Group II	14.67	2.10
Group III	14.47	2.10
Group IV	12.42	2.10
Group V	15.27	2.10
Group VI	15.52	2.10
Group VII	15.77	2.10
Zone 9:		
Group I	14.75	2.87
Group II	14.55	2.87
Group III	14.35	2.87
Group IV	13.75	2.87
Group V	15.00	2.87
Group VI	15.25	2.87

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Zone 1:		
Group 1	$12.66	$3.50
Group 2	12.86	3.50
Group 3	13.17	3.50
Group 4	13.32	3.50
Group 5	12.44	3.50
Zone 2:		
Group 1	17.10	
Group 2	17.25	
Group 3	17.32	
Group 4	17.21	
Group 5	17.00	
Zone 3:		
Group 1	16.05	
Group 2	16.20	
Group 3	16.27	
Group 4	16.16	
Group 5	15.95	
Zone 4:		
Group 1	14.64	2.75
Group 2	14.79	2.75
Group 3	14.86	2.75
Group 4	14.75	2.75
Group 5	14.54	2.75
Zone 5:		
Group 1	13.43	2.75
Group 2	13.58	2.75
Group 3	13.70	2.75
Group 4	13.59	2.75
Group 5	13.33	2.75
Zone 6:		
Group 1	12.70	2.75
Group 2	12.85	2.75
Group 3	12.97	2.75
Group 4	12.86	2.75
Group 5	12.60	2.75

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: (Cont'd)		
Zone 7:		
Group 1: Trucks or Trailers of a water level capacity of 11.99 cu. yds. or less; Forklift Trucks; Job Site Ambulance and Pickup Trucks and Flat Bed Trucks except as modified below	13.52	76.50+a
Group 2: Truck or Trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including Euclids, Speedace and similar equipment of same capacity and Compressors	13.72	76.50+a
Group 3: Trucks or Trailers of a water level capacity of 22.0 cu. yds. and over including Euclids, Speedace and all Plants, Flat Bed Trailers, Boom Trucks, Winch Trucks including small trailers, Farm Tractors, Tilt-top Trailers, Field Offices Tool Trailers, Concrete Pumps, Concrete Conveyors and Gasoline Tank Trailers	13.82	76.50+a

FOOTNOTES:
a. 7 Paid Holidays also, paid vacation of 3 days of 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any contract year; 5 days paid vacation for 1,000 hours of service in any one contract year.

AREAS COVERED BY CARPENTERS AND PILEDRIVERMEN ZONES

Zone 1 - Franklin, Jefferson, St. Charles Counties
Zone 1A- Lincoln, Warren Counties
Zone 2 - Pike, St. Francois, Washington Counties
Zone 3 - Cass, Lafayette Counties
Zone 4 - Atchison, Andrew, Barry, Barton, Bates, Buchanan, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Leclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Worth & Wright Counties
Zone 5 - Crawford, Dent, Gasconade, Iron, Madison, Maries, Montgomery, Phelps, Pulaski, Reynolds, Shannon & Texas Counties
Zone 6 - Boone, Cooper, Howard Counties
Zone 7 - Adair, Audrain, Benton, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Morgan, Pettis, Putnam, Ralls, Randolph, Schuyler, Scotland, Shelby & Sullivan Counties
Zone 7A- Callaway, Cole, Miller, Moniteau and Osage Counties
Zone 8 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Ste. Genevieve, Scott, Stoddard and Wayne Counties
Zone 9 - Clay, Jackson, Platte and Ray Counties
Zone 10- St. Louis County and City

AREAS COVERED BY CEMENT MASONS ZONES

Zone 1 - Bates, Carroll, Cass & Lafayette Counties
Zone 2 - Dent, Phelps, Pike, Pulaski, Texas, Marion & Ralls Counties
Zone 3 - Clay, Jackson, Platte & Ray Counties
Zone 4 - Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Leclede, Ozark, Polk, Stone, Taney, Webster & Wright Counties
Zone 5 - Benton, Henry, Hickory, Johnson, Morgan, Pettis, Saline & St. Clair Cos.
Zone 6 - Adair, Audrain, Boone, Chariton, Cooper, Howard, Linn, Macon, Moniteau, Monroe, Randolph, Shelby, Schuyler, Sullivan & Putnam Counties
Zone 7 - Callaway, Camden, Cole, Gasconade, Maries, Miller, Montgomery & Osage Counties
Zone 8 (a&b)- Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway & Worth Counties
Zone 9 - St. Louis City & County, Jefferson & St. Charles Counties
Zone 10 - Franklin, Lincoln, Warren, Iron, St. Francois, Ste. Genevieve, Washington, Reynolds & Madison Counties
Zone 11 - Crawford and Shannon Counties

AREAS COVERED BY ELECTRICIAN ZONES

Zone 1 - Adair, Audrain (that part of east of Highway 19), Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Putnam, Ralls, Schuyler, Scotland, Shelby and Sullivan Counties
Zone 2 - Area bounded on the North by State Highway 92 in Platte & Clay Counties; east by a straight line from Intersection of State Highway 92 & 33 in Clay County Intersection of U. S. Highway 24 & State Highway 7 in Jackson County; south on Highway 7 to Pleasant Hill; South from Pleasant Hill due West to the Missouri-Kansas State Line; West by the Missouri-Kansas State Line. Towns of Pleasant Hill & Blue Springs are excluded
Zone 3 - Portion of Cass, Clay, Jackson and Platte Counties not included in Zone 2

AREAS COVERED BY ELECTRICIAN ZONES (Cont'd)

Zone 4 - Bates, Benton, Henry, Johnson, Lafayette & Pettis Counties
Zone 5 - Carroll, Cooper, Morgan, Ray and Saline Counites
Zone 6 - St.Charles County, St. Louis County and City
Zone 7 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington and Wayne Counties
Zone 8 - Franklin, Jefferson, Lincoln & Warren Counties
Zone 9 - Bollinger, Cape Girardeau, Perry, Scott, St. Francois and Ste. Genevieve Counties
Zone 10- Butler, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Ripley, Reynolds, Stoddard, Washington and Wayne Counties
Zone 11- Christian, Dallas, Douglas,Greene, Hickory, Howell, Leclede, Oregon,Ozark, Polk, Shannon, Stone, Taney, Texas, Webster and Wright Counties
Zone 12- Pulaski County
Zone 13 - Andrew, Buchanan, Clinton, DeKalb, Atchison, Holt, Mercer, Gentry, Harrison, Daviess, Grundy, Worth, Livingston, Nodaway, Caldwell Counties
Zone 14 - Barry, Barton, Cedar, Dade, Jasper, McDonald, Newton, St. Clair, Vernon and Lawrence Counties
Zone 15 - Audrain (except Cuivre Township), Boone Callaway, Camden, Chariton, Cole, Crawford, Dent, Gasconade, Howard, Maries, Miller, Moniteau, Osage, Phelps and Randolph Counties

AREAS COVERED BY IRONWORKERS ZONES

Zone 1 - Audrain, Boone, Bollinger, Callaway, Camden, Carter, Cole, Crawford, Dent, Douglas, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Miller, Monroe, Montgomery, Oregon, Osage, Perry, Phelps,Pike, Pulaski, Ralls, Reynolds, St. Charles, St. Francois, St. Genevieve, St. Louis, St. Louis City, Shannon, Texas, Warren, Washington, Wayne and Wright Counties
Zone 2 - Andrew, Atchison, Barton, Bates, Benton, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Clay, Clinton, Cooper, Dallas, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Lafayette, Leclede, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Pettis, Platte, Polk, Putnam, Randolph, Ray, St. Clair, Saline, Sullivan, Vernon and Worth Counties
Zone 3 - Christian, Dade, Greene and Webster Counties
Zone 4 - Barry, Jasper, Lawrence, McDonald, Newton and Stone Counties
Zone 5 - Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland, Ralls, Monroe, and Shelby Counties
Zone 6 - Ozark and Taney Counties
Zone 7 - Butler, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Ripley, Scott and Stoddard Counties

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 1 AND 2

GROUP 1 - General Laborers - Carpenter tenders; salamander tenders; dump man and ticket takers on stock piles; loading trucks under bins, hoppers, and conveyors; track men and all other general laborers
GROUP 2 - First Semi-skill - Air tool operator; cement handler, bulk or sack; dump man on earth fill; georgie boggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers - rock, block or brick; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines, power tool operator, all work in connection with hydraulic or general dredging operations; puddlers (paving only); straw blower nozzleman
GROUP 3 - Second Semi-skill - Asphalt plant platform man; chuck tender; crusher feeder; man handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; vibrator man; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 feet where compressed air is not used; abutment and pier hole men working six (6) feet or more below ground; men working in coffer dams for bridge piers and footings in the river
GROUP 4 - Third Semi-skill - Laser beam man; asphalt raker; barco tamper; jackson or any other similar tamp; wagon driller; churn drills, air track drills and all other similar drills; cutting torch man; form setters; liners and stringline man on concrete paving, curb, gutters, ditch liners, hot mastic kettleman, hot tar applicator, hand blade operators, and mortar men on brick or

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 1 AND 2 (Cont'd)

GROUP 4 - Third Semi-Skill (Cont'd)

block manholes; sand blasting and gunite nozzle men; rubbing concrete; air tool operator in tunnels; caulker and lead man; screed man on asphalt machine, chain or concrete saw; cliff scalers working from scaffolds, bosuns' chairs or platforms on dams or power plants over ten (10) feet above ground; grade checker on cuts and fills string line man for electronic grade control; pressure groutmen
GROUP 5 - Fourth Semi-skill - Manhole builders, - brick or block dynamite and powder men; welder

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 3 AND 4

GROUP 1 - General Labor-Carpenter tenders; salamander tenders; dump man; ticket takers; loading trucks under bins, hoppers, and conveyors; track men; cement handler; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers-rock, block or brick; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, comduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setters, puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material; topper of standing trees; feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 ft. where compressed air is not used; abutment and pier hole men working six (6) ft. or more below ground; men working in coffer dams for bridge piers and footings in the river; barco tamper; jackson or any other similar tamp; cutting torch man; liners, curb, gutters, ditch liners; hot mastic kettleman; hot tar applicator; hand blade operator; mortar men on brick or block manholes; rubbing concrete, air tool operator under 65 lbs.; caulker and lead man; chain or concrete saw under 15 b.p.

GROUP 2 - First Semi-Skill-Vibrator man, asphalt raker; head pipe layer on sewer work; batterboard man on pipe and ditch work; cliff scalers working from bosun's chairs; scaffolds or platforms on dams or power plants over 10 ft. high; air tool operator over 65 lbs.; stringline man on concrete paving; sand blast man

GROUP 3 - Second Semi-Skill-Laser beam man; wagon drill; churn drill; air track drill and all other similar type drills, gunite nozzle man; pressure grout man; screed man on asphalt; concrete saw 15 b.p. and over; grade checker; stringline man on electronic grade control; manbole builder; dynamite man; powder man; welder; tunnel man

AREA COVERED BY LABORERS

Zone 1 - Buchanan, Cass and Lafayette Counties

Zone 2 - Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Greene, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Leclede, Lawrence, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Wright and Worth Counties.

Zone 3:
a - Franklin and Jefferson Counties
b - St. Charles County

AREA COVERED BY LABORERS (Cont'd)

Zone 4:
a - Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Linn, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Sullivan, Texas, Washington and Wayne Counties
b - Lincoln, Montgomery and Warren Counties

LABOR CLASSIFICATION DEFINITIONS - ZONE 5 - CLAY, JACKSON, PLATTE AND RAY COUNTIES

Group 1 - General laborer - Carpenter tenders, salamander tenders; loading trucks under bins, hopper and conveyors; track men and all other general laborers; air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgia buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams; abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; virbrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & doct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only); crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used

Group 2 - Skilled Laborers - Spreader or screed man on asphlat machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air track drills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters and (etc.); hot mastic kettleman; hot tar applicator; hand blade operators; mortar men on brick or block manholes; sand blasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; head pipe layer on power work; manbole building (brick or block); dynamite and powder men; welder

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Bates, Benton, Carroll, Cass, Clay, Henry, Johnson, Jackson, Lafayette, Pettis, Platte, Ray and Saline Counties
ZONE 2 - Andrew, Atchinson, Barry, Barton, Buchanan, Caldwell, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Hickory, Holt, Jasper, Leclede, Lawrence, Livingston, McConald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Stone, Taney, Vernon, Webster, Worth and Wright Counties
ZONE 3 - Crawford, Franklin, Iron, Jefferson, Reynolds, St. Charles, St. Francois, St. LouisCity, Washington, Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Dent, Gasconade, Howard, Howell, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ripley, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas and Warren Counties
ZONE 4 - Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Scott, Stoddard and Wayne Counties
ZONE 5 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew, DeKalb, Davies, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Vernon, Benton, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark and Gentry Counties
ZONE 6 - Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Howard, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macoo, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis and City, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Warren and Washington Counties
ZONE 7 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew, DeKalb, Daviess, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark, Gentry Counties

AREA COVERED BY PAINTERS

ZONE 1 - Bates, Caldwell, Carroll, Clinton, Cass, Clay, Daviess, Grundy, Henry, Harrison, Jackson, Johnson, Lafayette, Livingston, Mercer, Platte and Ray Counties
ZONE 2 - Bollinger, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Reynolds, Iron, Butler, Carter, Shannon, Wayne, Oregon, Ripley, Ste Genevieve, St. Francois, Perry, Washington, & Madison Cos.
ZONE 3 - Camden, Crawford, Dent Leclede, Maries, Miller, Phelps, Pulaski and Texas Counties
ZONE 4 - Benton, Cooper, Moniteau, Morgan, Pettis and Saline Counties
ZONE 5 - Andrew, Atchinson, Buchanan, DeKalb, Gentry, Holt, Nodaway & Worth Counties
ZONE 6 - Barry, Barton, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon Counties
ZONE 7 - Adair, Audrain, Boone, Callaway, Chariton, Cole, Gasconade, Howard, Monroe, Montgomery, Linn, Osage and Randolph Counties
ZONE 8 - Jefferson, St. Charles, St. Louis & City, Warren, Lincoln, Pike and Franklin Counties

AREA COVERED BY PAINTERS (Cont'd)

ZONE 9 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Ozark, Polk, Stone, Taney, Webster and Wright Counties
ZONE 10- Clark, Lewis, Marion and Ralls Counties

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS ZONES 1

Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; back hoe; blade operator, all types; boilers-2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; highloader-fork lift, and welders, field or shop; maintenance operator; mucking machine; piledriver operator; pitman crane operator; pump-2; quad-trac; scoop operator-all types; pushcat operator; scoops in tandem; self-propelled rotary drill (Leroy or Equal-not Air Trac); shovel operator; side discharge spreader; side boom cats; skimmer scoop operator; slip form paver (CMI, REX, or Equal); throttle man; truck crane; welding machine maintenance operator-2
Group II - "A" frame truck; asphalt hot mix silo; asphalt plant fireman; drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry, power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine-1 drum; Latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra- hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator; tractor operator-over 50 h.p.
Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; roller operator, other than dredge; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator, self-propelled street broom or sweeper, siphons and jets; subgrading machine operator; tank car heater operator-combination boiler and booster; tractor 50 hp or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator - 1
Group IV:
(a) Oiler
(b) Oiler drivers, all types
Group V - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (incl. jib); shovels and backhoes, 3 yds. capacity or over

POWER EQUIPMENT OPERATORS - ZONE 2

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley; air tugger w/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (job-site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bull-float; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination; compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination ; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; high-lift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

GROUP II - Conveyer, large (not self-propelled); conveyer, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacity or less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck); concrete saw, self-propelled; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one

POWER EQUIPMENT OPERATORS - ZONE 2 (Cont'd)

GROUP II (Cont'd)
over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pog mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

GROUP III - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardless of how used; oiler; sweeper, floor

GROUP IV - (a) Air pressure, oiler engineer, operating under ten pounds (b) Air pressure, oiler engineer operating over ten pounds (c) Air pressure engineer operating under ten pounds (d) Air pressure engineer operating over ten pounds (e) Crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoist, three or more drums; scoop, tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

POWER EQUIPMENT OPERATORS ZONES 3, 4, and 9

GROUP I - Asphalt finishing machine & trench widening spreader, asphalt plant console operator; autograder; automatic slipform paver; back hoe; blade operator - all types; boat operator - tow; boiler - 2; central mix concrete plant operator; clam shell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline opr.; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch-hammer wheel; locomotive operator - standard guage; mechanics and welders; mucking machine; piledriver operator; pitman crane operator; push cat operator; quad-trac; scoop operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane, shovel operator

GROUP II - A-Frame; asphalt hot-mix silo; asphalt roller operator; asphalt plant fireman (drum or boiler); asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader;

POWER EQUIPMENT OPERATORS ZONES 3, 4 and 9 CONT'D

GROUP II CONT'D
boat operator (bridge & dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; dredge oiler; elevating grader operator; fork lift; grease fleet; hoisting engine - 1; locomotive operator - narrow gauge; multiple compactor; pavement breaker; powerbroom - self propelled; power shield; rooter; slip-form finishing machine; stumpcutter machine; side discharge concrete spreader; throttleman; tractor operator (over 50 hp); winch truck; asphalt roller operator; crusher operator

GROUP III - Spreader box operator, self-propelled (not asphalt); tractor operator (50 h.p. or less); boilers - 1; chip spreader (front man); Churn drill operator; compresor over 105 CFM 2 - 3 pumps 4" & over; 2 - 3 light plant 7.5 KVA or any combination thereof; clef plane opr.; compressor maintenance operator 2 or 3; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant opeator; siphons & jets; subgrading machine operator; tank car heater (combination boiler & booster); ulmac, ulric or similar spreader; vibrating machine operator; hydrobroom

GROUP IV - Oiler; grout machine; oiler-driver; compressor over 105 CFM-1; conveyor operator-1; maintenance operator; pump-4" & over-1

GROUP V - Crane with 3 yds. & over buckets; dragline operator - 3 yds & over; shovel - 3 yds. & over; piledrivers - all types; clamshell - 3 yds. & over; boists - each additional active drum over 2 drums

GROUP VI - Tandem scoop operator

Crane, rigs over 100 feet (incl. jib)-10 per foot

POWER EQUIPMENT OPERATORS ZONES 5, 6, 7 and 8

GROUP I - Asphalt finisbing machine & trench widening spreader; asphalt plant console operator; automatic slipform paver; autograder; backhoe; blade operator, - all types; boat operator - tow; boilers - 2; central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch hammer wheel; locomotive operator; - standard guage; mechanics and welder; mucking machine; piledriver operator; sideboom cats; skimmer scoop operators; trenching machine operator; truck crane; scoop operators - all types

GROUP II - A-frame; asphalt hot mix silo; asphalt plant fireman (drum or boiler); asphalt roller operator; asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridges and dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete

POWER EQUIPMENT OPERATORS - ZONES 5, 6, 7 and 8 (Cont'd)

GROUP II (Cont'd):
pump operator; crusher operator; dredge oiler; elevating grader operator; fork lift; greaser-fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor, pavement breaker; power - broom - self-propelled; power shield; rooter; slip form finishing machine; stumpcutter machine; side discharge concrete spreader; throttle man; tractor operator (over 50 hp); winch truck

GROUP III - Boilers - 1; chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator (combination boiler & booster); ulmac, ulric, or similar spreader; vibrating machine operator, not hands; tractor operator (50 hp or less)

GROUP IV - Oiler; oiler driver, fireman - rig; maintenance operators

GROUP V - Dragline operator - 3 yds. & over; shovel - 3 yds. & over; clamshell - 3 yds. & over; crane, rigs or piledrivers, 100' of boom or over (incl. jib), boists - each additional active drum over 2 drums

GROUP VI - Tandem scoop operator; crane, rigs or piledrivers 150' to 200' of boom (inc. jib)

GROUP VII - Crane rigs, or piledrivers 200 ft. of boom or over (incl. jib)

AREAS COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Clay, Jackson, Platte and Ray Counties
ZONE 2 - St. Louis City and County
ZONE 3 - Franklin, Jefferson, St. Charles Counties
ZONE 4 - Adair, Audrain, Boillinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Gasconade, Howell, Iron, Knox, Lewis, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Washington, and Wayne Counties
ZONE 5 - Buchanan, Cass, Clinton and Lafayette Counties
ZONE 6 - Andrew, Atchinson, Bates, Benton, Caldwell, Carroll, Charlton, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Johnson, Linn, Livingston, Mercer, Nodaway, Pettis, Saline, Sullivan and Worth Counties
ZONE 7 - Christian, Greene, Jasper, Lawrence and Taney Counties
ZONE 8 - Barry, Barton, Camden, Cedar, Dade, Dallas, Douglas, Hickory, Laclede, McDonald, Newton, Ozark, Polk, St. Clair, Stone, Vernon, Webster and Wright Counties
ZONE 9 - Lincoln and Warren Counties

TRUCK DRIVER CLASSIFICATION DEFINITIONS

ZONE 1

Group 1 - One team; station wagons; pickups, material, single axle; tank wagon, single axle
Group 2 - Two teams, material tandem; semi-trailers; winch, fork distributor drivers and operators, agitator and transit mix, tank wagon, tandem or semi-trailers, insley wagons, dump excavating, 5 cu. yds. & over, dumpsters, half-tracks, speedace, euclids and other similar excavating equipment
Group 3 - A-frame, low boy, boom
Group 4 - Mechanics and welders
Group 5 - Oilers and greasers

ZONES 2, 3, 4, 5 & 6

Group 1 - Flat bed trucks - single axle; station wagon; pickup trucks; material trucks - single axle; tank wagon - single axle
Group 2 - Flat bed trucks - tandem axle; material trucks, tandem axle; tank wagon - tandem axle
Group 3 - Semi and/or pole trailers; winch fork and steel trucks; Insley wagons, dumpsters, half tracks, speedace, euclids, and other similar equipment, a-frame and derrick trucks, float or low boy, distributor drivers and operators, tank wagon, semi-trailer
Group 4 - Agitator and transit mix trucks
Group 5 - Warehouseman

AREA COVERED BY TRUCK DRIVER ZONES

ZONE 1 - Clay, Jackson, Platte & Ray Counties
ZONE 2 - Franklin, Jefferson and St. Charles Counties
ZONE 3 - Lincoln and Warren Counties
ZONE 4 - Buchanan, Cass, Johnson and Lafayette Counties
ZONE 5 - Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Christian, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Gasconade, Greene, Henry, Hickory, Howard, Iron, Jasper, Leclede, Lawrence, Linn, Livingston, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Newton, Osage, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, St. Clair, St. Francois, Ste. Genevieve, Saline, Scott, Shannon, Shelby, Stoddard, Texas, Vernon, Washington, Wayne, Webster and Wright Counties
ZONE 6 - Adair, Atchison, Berry, Butler, Clark, Dunklin, Gentry, Grundy, Harrison, Holt, Howell, Knox, Lewis, McDonald, Mercer, Nodaway, Oregon, Ozark, Putnam, Ripley, Schuyler, Scotland, Stone, Sullivan, Taney and Worth Counties
ZONE 7 - St. Louis City and County

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA COUNTIES: CHEROKEE, UNION, & YORK

DECISION NUMBER: SC83-1051 DATE: DATE OF PUBLICATION

Supersedes Decision Number SC79-1038, dated February 23, 1979, in 44 FR 10934.

DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not included single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 6.75	
BRICKLAYERS	8.55	
CARPENTERS	7.25	
CEMENT MASONS	7.00	
ELECTRICIANS	8.00	
INSULATION INSTALLERS (Batt & Blown)	4.50	
INSULATORS (Mechanical, Heat & Frost)	9.50	
IRONWORKERS	7.06	
LABORERS:		
Unskilled	4.43	
Mason tenders	4.70	
LATHERS	8.81	
PAINTERS	7.00	
PLUMBERS & PIPEFITTERS	7.00	
ROOFERS	5.75	
SHEET METAL WORKERS	6.50	
TRUCK DRIVERS	5.17	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Backhoe	7.05	
Bulldozer	7.05	
Front end loader	6.38	
Motor grader	7.50	
Roller	4.50	
Tractor	6.00	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).		

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA
DECISION NUMBER: SC83-1052
COUNTY: SPARTANBURG
DATE: DATE OF PUBLICATION

Supersedes Decision Number SC79-1048, dated March 16, 1979, in 44 FR 16295.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not included single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 7.50	
BRICKLAYERS	8.00	
CARPENTERS	6.98	
CEMENT MASONS	7.02	
DRYWALL FINISHERS	6.50	
DRYWALL HANGERS	6.98	
ELECTRICIANS	7.85	
GLAZIERS	7.60	
INSULATORS (Mechanical, Heat & Frost)	9.58	
IRONWORKERS	7.59	
LABORERS - GENERAL	4.55	
LATHERS	10.01	
MILLWRIGHTS	9.80	
PAINTERS	6.50	
PLASTERERS	7.00	
PLUMBERS & PIPEFITTERS	7.36	
ROOFERS	4.55	
SHEET METAL WORKERS	7.00	
TILE SETTERS	8.00	
TRUCK DRIVERS	5.16	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.25	
Bulldozer	5.25	
Crane	7.75	
Front end loader	5.25	
Motor grader	5.50	
Pan - scraper	5.25	
Roller	5.25	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Texas
COUNTIES: Cameron, Hidalgo, Starr & Willacy
DECISION NO. TX83-4048
DATE: Date of Publication
Supersedes Decision No. TX81-4052 dated 7/10/81 in 46 FR 35903
DESCRIPTION OF WORK: Building (including Residential) projects

BUILDING & RESIDENTIAL	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS(Bldg.)	$14.99	1.74
BOILERMAKERS	16.35	2.315
BRICKLAYERS	6.00	
CARPENTERS	5.95	
CEMENT MASONS	5.74	
ELECTRICIANS:		
Building	6.425	
Residential	6.07	
INSULATION INSTALLERS (Residential)	5.50	
IRONWORKERS, REINFORCING	4.02	
LABORERS:		
Unskilled	3.89	
Pipelayers	5.45	
PAINTERS	6.49	
PLASTERERS:		
Building	7.00	
Residential	6.50	
PLUMBERS & PIPEFITTERS:		
Building	10.87	1.04
Residential	8.20	
ROOFERS	5.00	
SHEET METAL WORKERS	4.23	
SHEET ROCK INSTALLERS	5.00	
SOFT FLOOR LAYERS	5.335	
TILE SETTERS	5.00	
POWER EQUIPMENT OPERATORS:		
Backhoes	5.50	
Graders	5.50	
Loaders	5.41	

INCIDENTAL PAVING & UTILITIES	Basic Hourly Rates	Fringe Benefits
Asphalt Raker	$ 4.50	
Asphalt Shoveler	4.85	
Carpenter	5.70	
Carpenter Helper	4.65	
Concrete Finisher(Paving)	5.50	
Conc. Finisher Helper (Paving)	4.00	
Conc.Finisher(Structures)	5.50	
Conc.Finisher Helpers (Structures)	4.15	
Concrete Rubber	4.25	
Form Builder(Structures)	6.50	
Form Setter(Structures)	5.25	
Form Setter Helper (Structures)	4.25	
Laborer, Common	4.00	
Laborer,Utility Man	4.55	
Mechanic	5.80	
Mechanic Helper	4.70	
Oiler	5.20	
Serviceman	5.00	
Pipelayer	5.15	
Powderman	5.00	
Reinforcing Steel Setter (Structures)	5.65	
Reinforcing Steel Setter Helper	4.75	
Sign Erector	6.75	
Sign Erector Helper	5.50	
Power Equipment Operators:		
Asphalt Distributor	5.50	
Asphalt Paving Machine	5.30	
Broom or Sweeper Op.	4.60	
Bulldozer 150 HP & Less	4.25	
Bulldozer over 150 HP	5.70	
Concrete Paving Finishinf Machine	5.00	
Crane,Clamshell,Backhoe, Derrick,Dragline,Shovel (less than 1½CY)	5.75	
Crane,Clamshell,Backhoe, Derrick,Dragline,Shovel (1½CY & Over)	6.25	

DECISION NO. TX83-4048 PAGE 2

INCIDENTAL PAVING & UTILITIES	Basic Hourly Rates	Fringe Benefits
Power Equipment Ops.(Cont'd):		
Front End Loader (2½ CY & Less)	$ 5.25	
Front End Loader (Over 2½ CY)	7.00	
Motor Grader Op., Fine Grade	6.85	
Motor Grader Operator	6.50	
Roller,Steel Wheel (other-Flat Wheel or Tamping)	4.05	
Roller,Steel Wheel (Plant-Mix Pavement)	4.60	
Roller,Pneumatic(Self-Propelled)	4.65	
Scrapers (17 CY & Less)	4.60	
Scrapers (Over 17 CY)	5.25	
Tractor(Crawler Type) 150 HP & Less	$ 4.30	
Tractor(Pneumatic) over 80 HP	4.65	
Tractor (Crawler Type) over 150 HP	5.00	
Traveling Mixer	4.75	
Trenching Machine,Heavy	6.25	
Truck Drivers:		
Single Axle Light	4.00	
Tandem Axle or Semi-trailer	4.05	
Lowboy-Float	4.75	
Welder	5.60	
Welder Helper	5.00	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 83-16775 Filed 6-23-83; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
January 24, 1983

Part XXXI

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 918]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: June 20, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 918
ISSUED JUNE 20, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	05/27/83	JA: TX			
8339278	F-03-066975	4205132584		102-2		LAUDERDALE "N" #2	BIG "A" TAYLOR	2260.0	PHILLIPS PETROLEU
-ADVANCED SPECIALTIES OIL CORP				RECEIVED:	05/27/83	JA: TX			
8339269	F-03-062899	4204130801		102-2		MORGEN #1	KURTEN (WOODBINE)	1095.0	FERGUSON CROSSING
-AKERS AND FULTZ INC				RECEIVED:	05/27/83	JA: TX			
8339211	F-09-063009	4223700000		108		ROY CHERRYHOMES REG #3 RCC #14314	JACK COUNTY REGULAR	7.0	CITIES SERVICE GA
-ALLAR CO				RECEIVED:	05/27/83	JA: TX			
8339326	F-09-67635	4223700000		103		MARY GRAHAM EST #2	CRUM MARBLE FALLS	20.0	LONE STAR GAS CO
-AMARILLO OIL COMPANY				RECEIVED:	05/27/83	JA: TX			
8339320	F-10-67555	4237500000		107-PE		SANFORD #5	PANHANDLE WEST FIELD	0.0	WESTAR TRANSMISSI
-AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED:	05/27/83	JA: TX			
8339210	F-06-062931	4242300000		103	107-TF	MATLOCK #1	OVERTON (COTTON VALLE	200.0	UNITED GAS PIPE L
-AMOCO PRODUCTION CO				RECEIVED:	05/27/83	JA: TX			
8339331	F-08-67657	4213534093		103		ELLIOTT F COWDEN "A" #148	FOSTER	0.1	WESTAR TRANSMISSI
8339332	F-08-67658	4213534091		103		ELLIOTT F COWDEN "B" #88	FOSTER	0.0	WESTAR TRANSMISSI
8339312	F-7C-067330	4223531851		103		JANE ELIZABETH CHARLTON #3	BROOKS (CANYON-GAS)	7.0	NORTHERN NATURAL
8339271	F-10-066730	4239330802		103		LIPS RANCH "B" #27	LIPS WEST	130.0	NORTHERN NATURAL
8339330	F-8A-67656	4244531098		103		PRENTICE NORTHEAST UNIT #150	PRENTICE/6700/	0.0	AMOCO PRODUCTION
-ARCO OIL AND GAS COMPANY				RECEIVED:	05/27/83	JA: TX			
8339334	F-08-67660	4213534002		103		GOLDSMITH - CUMMINS (DEEP) #177	GOLDSMITH (CLEARFORK)	29.0	PHILLIPS PETROLEU
8339335	F-08-67661	4213534000		103		GOLDSMITH - CUMMINS (DEEP) #178	GOLDSMITH (CLEARFORK)	22.0	PHILLIPS PETROLEU
8339333	F-08-67659	4213534001		103		GOLDSMITH - CUMMINS (DEEP) #179	GOLDSMITH (CLEARFORK)	24.0	PHILLIPS PETROLEU
8339336	F-04-67662	4213133985		108		J R FOSTER #59	HAGIST RANCH (1100)	15.0	NATURAL GAS PIPEL
8339152	F-06-052039	4236531363		103	107-TF	O B HICKS GAS UNIT #4	CARTHAGE (COTTON VALL	400.0	SOUTHERN NATURAL
-BAMM DRILLING INC				RECEIVED:	05/27/83	JA: TX			
8339214	F-03-063098	4214931383		103		E A & J D ARNIM #3	ARNIM (COCKRILL 1900)	30.0	SOUTH CEN-TEX GAS
-BARBEE INC				RECEIVED:	05/27/83	JA: TX			
8339405	F-7B-67813	4225332348		102-4		SHANNON #2	JEFFERIES LUCK	3.6	CONOCO INC
8339404	F-7B-67811	4225332385		102-4		SHIELDS #2	TRUBY SW (STRAWN A)	72.0	CONOCO INC
8339406	F-7B-67819	4225331555		102-4		VERNON STANLEY #1	TRUBY SW (STRAWN A)	5.5	CONOCO INC
-BECKER & O/D INTERNATIONAL INC				RECEIVED:	05/27/83	JA: TX			
8339168	F-04-055691	4227331582		102-4	103	INEZ W KOWALSKI UNIT #1	KINGSVILLE (3100' SEG	300.0	TEXAS EASTERN TRA
-BEST PETROLEUM EXPLORATION INC				RECEIVED:	05/27/83	JA: TX			
8339269	F-7B-066682	4236732437		102-4		ROY MARTIN 1-G #1-G	WILDCAT	0.0	SOUTHWESTERN GAS
-BILL FORNEY INC				RECEIVED:	05/27/83	JA: TX			
8339252	F-02-065914	4229733253		102-4		SCHREINER RANCH TRUST II WELL #5	OAKVILLE (WILCOX 9700	1.0	HOUSTON PIPE LINE
-BLOCKER EXPLORATION CO				RECEIVED:	05/27/83	JA: TX			
8339149	F-04-048290	4250531251		102-4		L ARMOUR NIMNANT 1-252	WILDCAT	548.0	TEJAS-SW TWO
-BRAZOS PETROLEUM CO				RECEIVED:	05/27/83	JA: TX			
8339314	F-08-067441	4232931127		103		ERVIN #2	SPRABERRY (TREND AREA	18.0	PHILLIPS PETROLEU
-BUCK WHEAT RESOURCES INC				RECEIVED:	05/27/83	JA: TX			
8339288	F-7B-067120	4242933515		102-4		SMITH A #2	SMITH (MISS)	0.0	WARREN PETROLEUM
-CABOT PETROLEUM CORP				RECEIVED:	05/27/83	JA: TX			
8339315	F-10-067471	4223331358		103		WILLIAM YAKE "C" #13	PANHANDLE HUTCHINSON	18.0	PANHANDLE EASTERN
-CANYON RESOURCES INC				RECEIVED:	05/27/83	JA: TX			
8339290	F-10-067125	4208730206		103		MCDOWELL #1	PANHANDLE EAST	29.9	HIGH PLAINS NATUR

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO
8339289	F-10-067124	4208730205
-CARTER ENERGY CORP		
8339408	F-09-67835	4249732509
-CARTER EXPLORATION CO		
8339202	F-02-062143	4223900000
-CATLETT E G		
8339195	F-02-061608	4228531685
-CHAMPLIN PETROLEUM COMPANY		
8339263	F-066357	4204100000
8339381	F-04-67243	4221500000
-CICO OIL & GAS CO		
8339327	F-02-67645	4212331279
-COMANCHE INVESTMENTS		
8339254	F-7B-065932	4213334581
-CONOCO INC		
8339247	F-10-065704	4206500000
8339246	F-10-065703	4206500000
8339197	F-10-061647	4206500000
8339196	F-10-061645	4206500000
8339399	F-08-67801	4231731249
8339398	F-08-67808	4213531887
8339382	F-08-67756	4210931675
8339400	F-09-67802	4248535339
-CROWN PRODUCTION CO		
8339173	F-01-05636	4216331834
-CYCLONE EXPLORATION INC		
8339291	F-7C-067144	4243532887
-D J PRODUCTION INC		
8339201	F-10-062087	4223300000
8339200	F-10-062086	4223300000
8339199	F-10-062085	4223300000
-D L WHITAKER OIL CO		
8339221	F-7B-063712	4244733334
-DALLAS ENERGY DEVELOPMENT CORP		
8339208	F-7B-062895	4213534167
-DAVID A SCHLACHTER OIL & GAS		
8339340	F-06-67670	4249931110
-DBH PETROLEUM INC		
8339343	F-08-67684	4237133892
8339348	F-08-67689	4237133894
8339344	F-08-67685	4237133893
8339345	F-08-67686	4237133381
8339346	F-08-67687	4237133510
8339347	F-08-67688	4237133536
-DELTA DRILLING CO		
8339215	F-06-063156	4242300000
-DIAMOND SHAMROCK CORPORATION		
8339388	F-10-67766	4234100000
-DIRECTION ENERGY CORP		
8339249	F-10-065838	4223331537
8339250	F-10-065839	4223331536
8339251	F-10-065841	4223331538
-DIXON H D		
8339350	F-08-67693	4237100000
8339354	F-08-67697	4237100000
8339351	F-08-67694	4237100000
8339349	F-08-67692	4237100000
8339352	F-08-67695	4237100000
8339353	F-08-67696	4237100000
-DJS ENERGY CORP		
8339264	F-7C-066395	4210534321
-DYCO PETROLEUM CORPORATION		
8339190	F-03-061328	4229100000
-DYNE OIL & GAS INC		
8339296	F-10-067183	4217931305
-EL PASO NATURAL GAS COMPANY		
8339198	F-10-062007	4217900000
8339136	F-10-022715	4221100000
8339144	F-7C-038781	4243500000
8339206	F-7C-062723	4243500000
8339140	F-7C-033032	4243500000
8339179	F-7C-059278	4243500000
8339148	F-10-047501	4217900000
8339134	F-7C-003107	4243500000
8339156	F-10-052823	4217900000
8339165	F-10-054499	4217900000
8339164	F-10-054313	4217900000
8339158	F-10-052825	4217900000
8339132	F-10-002457	4208700000
8339137	F-10-023815	4217900000
8339176	F-10-058236	4217900000
8339142	F-10-036559	4248300000
8339159	F-10-052827	4217900000
8339147	F-7C-045746	4243500000
8339138	F-10-029850	4208700000
8339186	F-10-060460	4208700000
8339178	F-7C-059815	4243500000
8339187	F-7C-06046	4243500000
8339146	F-7C-042712	4243500000
8339157	F-10-052824	4221100000
8339133	F-10-002538	4248300000
8339131	F-10-002421	4217926236
8339143	F-10-037519	4217900000
8339155	F-10-052822	4217900000
8339151	F-7C-049516	4243500000
8339135	F-7C-009196	4243500000
8339139	F-7C-030872	4243500000
8339150	F-10-049575	4208700000
-EMERGETICS INC		
8339307	F-10-067277	4234130913
8339306	F-10-067276	4234130911
8339305	F-10-067275	4234130912
8339304	F-10-067274	4234130910
8339303	F-10-067273	4234130907

D	SEC(1)	SEC(2)	WELL NAME
	103		MCDOWELL #2
	RECEIVED:	05/27/83	JA: TX
	103		JIM STEVENS UNIT #3
	RECEIVED:	05/27/83	JA: TX
	102-4	103	L R DRUSHEL #1
	RECEIVED:	05/27/83	JA: TX
	102-4		TERRY-GOTT UNIT #1
	RECEIVED:	05/27/83	JA: TX
	102-2		E M DANSBY #2
	108		F B GUERRA "B" #4
	RECEIVED:	05/27/83	JA: TX
	102-4		SAGER #1 (104202)
	RECEIVED:	05/27/83	JA: TX
	102-4	103	BIG MIKE "B" #1
	RECEIVED:	05/27/83	JA: TX
	108		BURNETT #106A
	108		BURNETT #50A
	108		BURNETT 18A
	108		BURNETT 76A
	108		GRISHAM-GREEMAN #23 (22261)
	108		H S FOSTER -C- #5 (18248)
	103		RAMSEY "44" #11 (27636)
	108		T J & J & WAGGONER #51 (18376)
	RECEIVED:	05/27/83	JA: TX
	103		KING & "D"
	RECEIVED:	05/27/83	JA: TX
	103	107-TF	JOHN D FIELDS #2-60
	RECEIVED:	05/27/83	JA: TX
	103		PRUETT #1
	103		PRUETT #2
	103		PRUETT #3
	RECEIVED:	05/27/83	JA: TX
	102-4		KEETER "B" #13
	RECEIVED:	05/27/83	JA: TX
	102-4		CAMPBELL #1
	RECEIVED:	05/27/83	JA: TX
	102-4		MARY LOU FOSTER #1
	RECEIVED:	05/27/83	JA: TX
	103		WHITE & BAKER "B" LEASE #2
	103		WHITE & BAKER "B" LEASE WELL #1
	103		WHITE & BAKER "B" LEASE WELL #3
	103		WHITE & BAKER LEASE WELL #1
	103		WHITE & BAKER LEASE WELL #2
	103		WHITE & BAKER LEASE WELL #3
	RECEIVED:	05/27/83	JA: TX
	102-4	103	JONES #1
	RECEIVED:	05/27/83	JA: TX
	108		ROBERTSON "C" #4
	RECEIVED:	05/27/83	JA: TX
	103		KYLE #2
	103		KYLE #3
	103		KYLE #4
	RECEIVED:	05/27/83	JA: TX
	108		WHITE & BAKER "A" LEASE WELL #3
	108		WHITE & BAKER "B" LEASE WELL #1
	108		WHITE & BAKER "B" LEASE WELL #3
	108		WHITE & BAKER "O" LEASE WELL #7
	108		WHITE & BAKER "P" LEASE WELL #1
	108		WHITE & BAKER "P" LEASE WELL #2
	RECEIVED:	05/27/83	JA: TX
	103	107-TF	LADD-PIERCE "1" #1
	RECEIVED:	05/27/83	JA: TX
	103		DYCO HAMILL MCDONALD #5
	RECEIVED:	05/27/83	JA: TX
	108		MCCONNELL #7 LEASE #00287
	RECEIVED:	05/27/83	JA: TX
	108-PB		CALLHAM #1
	108-PB		CHANDLER #1
	108-PB		DEBERRY A #2
	108-PB		DEBERRY A #5
	108-PB		DEBERRY-BOXETT UNIT #2
	108-PB		DEBERRY-BOYETT UNIT #1
	108-PB		DORSEY #2
	108-PB		FIELDS ESTATE #1
	108-PB		GRIFFIN #1
	108-PB		HANNER X #1
	108-PB		HERRINGTON #1
	108-PB		HESS #1
	108-PB		HOBBS #2
	108-PB		HOWARD #1
	108-PB		JOHNSTON #1
	108-PB		LAYCOCK B #1
	108-PB		MAGEE #1
	108-PB		MARTIN #1
	108-PB		MCDOWELL #5
	108-PB		MCDOWELL #6
	108-PB		MECKEL #18
	108-PB		MECKEL #5
	108-PB		MECKEL #7
	108-PB		MEEK #1
	108-PB		NICHOLSON B #1
	108-PB		ORR #3
	108-PB		REEVES #1
	108-PB		RICE #1
	108-PB		SIMMONS #1
	108-PB		THOMSON C #4
	108-PB		THOMSON 62 #1
	108-PB		WISCHKAEMPER H #1
	RECEIVED:	05/27/83	JA: TX
	103		MASTERSON G-51 (03839)
	103		MASTERSON G-52 (03839)
	103		MASTERSON G-53 (03839)
	103		MASTERSON G-54 (03839)
	103		MASTERSON H-22 (03839)

FIELD NAME	PROD	PURCHASER
PANHANDLE EAST	158.4	HIGH PLAINS NATUR
BOONSVILLE (BEND CONG	110.0	LONE STAR GAS CO
WILDCAT	50.0	DELHI GAS PIPELIN
CLARKS CREEK	72.0	VALERO TRANSMISSI
KURTEN (BUDA)	0.0	FERGUSON CROSSING
LA REFORMA	0.0	TENNESSEE GAS PIP
CUERO S (FRIO 2,350')	120.0	LONE STAR GAS CO
DAVENPORT (RANGER M)	0.0	LONE STAR GAS CO
PANHANDLE WEST	21.0	NORTHWEST CENTRAL
PANHANDLE WEST	21.0	NORTHWEST CENTRAL
WEST PANHANDLE	8.0	CITIES SERVICE GA
WEST PANHANDLE	12.0	CITIES SERVICE GA
SPRABERRY/TREND AREA/	7.0	ADOBE OIL CO
SOUTH COWDEN	0.1	PHILLIPS PETROLEU
GERALDINE (DELAWARE 3	12.0	EL PASO NATURAL G
WICHITA COUNTY REGULA	0.0	EAGLE PETROLEUM C
PEARSALL (AUSTIN CHAL	11.0	T G P INC
SAWYER (CANYON)	130.0	EL PASO NATURAL G
PANHANDLE HURCHINSON	78.0	PANHANDLE EASTERN
PANHANDLE HURCHINSON	78.0	PANHANDLE EASTERN
PANHANDLE HURCHINSON	70.0	PANHANDLE EASTERN
KEETER	0.0	H S T GATHERING C
CAMPBELL (MARBLE FALL	66.1	EL PASO HYDROCARB
YANTIS (HEARD UP)	0.0	LONE STAR GAS CO
WHITE & BAKER	12.8	DBH GAS INC
WHITE & BAKER	23.4	DBH GAS INC
WHITE & BAKER	10.2	DBH GAS INC
WHITE & BAKER	2.2	DBH GAS INC
WHITE & BAKER	7.9	DBH GAS INC
WHITE & BAKER	4.4	DBH GAS INC
CHAPEL HILL	8.0	ETEXAS PRODUCERS
PANHANDLE WEST	0.0	NORTHERN NATURAL
PANHANDLE	60.0	PHILLIPS PETROLEU
PANHANDLE	60.0	PHILLIPS PETROLEU
PANHANDLE	60.0	PHILLIPS PETROLEU
WHITE & BAKER	0.0	DBH GAS INC
WALKER	0.0	DBH GAS INC
WALKER	0.0	DBH GAS INC
WHITE	0.0	DBH GAS INC
WALKER	0.0	DBH GAS INC
WALKER	0.0	DBH GAS INC
OZONA (CANYON SAND)	54.0	VALERO TRANSMISSI
CLEVELAND N (WILCOX U	60.0	TENNECO INC
PANHANDLE - GRAY COUN	0.0	KERR - MCGEE CORP
PANHANDLE WEST	0.0	EL PASO NATURAL G
VIKING	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
FIELDS ESTATE	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
BUFFALO WALLOW	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
PANHANDLE WEST	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
SONORA	0.0	EL PASO NATURAL G
PANHANDLE EAST	0.0	EL PASO NATURAL G
PANHANDLE (RED CAVE)	20.4	COLORADO INTERSTA
PANHANDLE (RED CAVE)	11.0	COLORADO INTERSTA
PANHANDLE (RED CAVE)	14.3	COLORADO INTERSTA
PANHANDLE (RED CAVE)	25.0	COLORADO INTERSTA
PANHANDLE (RED CAVE)	17.1	COLORADO INTERSTA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8339302	F-10-067272	4234130908		103		MASTERSON H-23 (03839)
8339301	F-10-067271	4234130906		103		MASTERSON H-24 (03839)
-ENSERCH EXPLORATION INC				RECEIVED:	05/27/83	JA: TX
8339392	F-04-67785	4247983054		108		T MIDDLETON #2
-EXCELSIOR OIL CORP				RECEIVED:	05/27/83	JA: TX
8339266	F-06-066533	4218300000		103		SCOTT BRYANT HEIRS #1
-EXXON CORPORATION				RECEIVED:	05/27/83	JA: TX
8339388	F-03-67740	4233930560		103		CONROE FIELD UNIT #1938
8339328	F-03-67652	4233930563		103		CONROE FIELD UNIT #2070
8339394	F-10-67794	4219530071		108		HANSFORD GAS UNIT #9 #1
8339393	F-10-67793	4229500085		108		HENRY-FRASS JR "C" #1
8339396	F-08-67797	4210302784		108		J B TUBB A/C 1 #43
8339395	F-08-67796	4210302793		108		J B TUBB A/C 1 #49
8339397	F-08-67798	4210302848		108		J B TUBB A/C 1 #85
8339407	F-04-67832	4226130761		103		K R SAN JOSE DE LA PARRA 45 104186
8339262	F-03-066269	4267300000		103		KATY GAS FIELD CONS UNIT #4404-H
8339292	F-7C-067161	4243131273		103		LOU E JOHNSON ESTATE A/C 1 #42
8339341	F-04-67672	4226130754		102-4		MRS S K EAST 144-F (ID #104209)
8339283	F-8A-067069	4216532503		103		ROBERTSON CLEARFORK UNIT #2003
8339284	F-8A-067070	4216532499		103		ROBERTSON CLEARFORK UNIT #4101
8339285	F-8A-067071	4216532501		103		ROBERTSON CLEARFORK UNIT #5401
-EZEKIEL ENERGY INC				RECEIVED:	05/27/83	JA: TX
8339355	F-10-67702	4217931314		103		JANIS #1-3 (ID #05336)
-FAGADAU ENERGY CORP				RECEIVED:	05/27/83	JA: TX
8339409	F-09-67839	4200936660		102-4		MIKE WOLF #1 RRC #23038
-FALCON PETROLEUM COMPANY				RECEIVED:	05/27/83	JA: TX
8339170	F-10-056013	4229531181		102-4		POPPE-KOCH #1
-FRANKS PETROLEUM INC ETAL				RECEIVED:	05/27/83	JA: TX
8339313	F-86-067433	4220331039		102-4		W E MEAD HEIRS B #1
-GETTY OIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339248	F-04-065760	4247900000		102-4	107-TF	DIX RANCH #1768
8339366	F-7B-67718	4243331432		103		FLOWERS CANYON SAND UNIT #221
8339365	F-7B-67717	4243331563		103		FLOWERS CANYON SAND UNIT #224
8339364	F-7B-67716	4243331577		103		FLOWERS CANYON SAND UNIT #225
8339363	F-7B-67715	4243331578		103		FLOWERS CANYON SAND UNIT #226
8339342	F-8A-67683	4207931335		103		XIT UNIT #183
-GIBSON DRILLING CO				RECEIVED:	05/27/83	JA: TX
8339174	F-05-056798	4234932303		103		W E JOHNSON #1 PERMIT # 146133
-GLENN PETROLEUM CORP				RECEIVED:	05/27/83	JA: TX
8339272	F-04-066827	4213136139		102-4		ESTELLA GARCIA #1
-GO OIL CORP				RECEIVED:	05/27/83	JA: TX
8339220	F-09-063367	4249731194		102-4		GARVIN UNITED METHODIST CHURCH #1
-GRAHAM ENERGY LTD				RECEIVED:	05/27/83	JA: TX
8339193	F-7C-061518	4208131035		103		WALKER #2
-GULF OIL CORPORATION				RECEIVED:	05/27/83	JA: TX
8339481	F-03-67803	4204130382		102-2		GUEST UNIT II #1
8339167	F-10-054816	4221100000		108-PB		JENKIE CAMPBEL #1-1
8339357	F-03-67704	4204130508		103		LOUIS KINDT UNIT I #1
8339356	F-03-67703	4204130536		103		OPERSTENY UNIT #1
8339386	F-04-67763	4250531542		103	107-TF	R VIDAURRI #11
8339358	F-03-67705	4204130539		103		SHEALY UNIT III #1
8339245	F-10-065570	4221130916		108-PB		W CAMPBELL #3-56
8339387	F-03-67765	4204130535		103		W F ODOM UNIT IV #1
-GUS EDWARDS CO				RECEIVED:	05/27/83	JA: TX
8339318	F-8A-67509	4210130342		102-4		R B EITER #4
-HENRY PETROLEUM CORP				RECEIVED:	05/27/83	JA: TX
8339218	F-8A-063335	4211500000		103		COPE 82-1
8339217	F-8A-063329	4211500000		103		YATES 82-A #1
-HIGHLAND PRODUCTION CO				RECEIVED:	05/27/83	JA: TX
8339385	F-08-67762	4210300009		108		PIMMIE TUCKER #1
-HNG OIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339230	F-7C-064685	4243500000		103	107-TF	PFLUGER "104" #6
8339228	F-7C-064431	4243500000		103	107-TF	REED "100" #6
8339229	F-7C-064590	4243500000		103	107-TF	SHANNON "52" #5
-HONDO OIL & GAS COMPANY				RECEIVED:	05/27/83	JA: TX
8339338	F-08-67664	4210931640		103		HAWKINS GRUBB #4
8339337	F-08-67663	4210931639		103		HAWKINS GRUBB #5
-HUNT OIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339213	F-7C-063065	4246131936		102-4		BARNETT-AMACKER 75 #1
-INTERNORTH INC				RECEIVED:	05/27/83	JA: TX
8339295	F-08-067168	4243181256		102-4		CHAPPELL "62" #1
8339294	F-08-067167	4243131258		102-4		CHAPPELL "62" #2
8339293	F-08-067166	4243131257		102-4		CHAPPELL "62" #3
-ITEX ENERGY CORP				RECEIVED:	05/27/83	JA: TX
8339379	F-06-67735	4240131494		102-4	103	BIRDWELL #1 RRC LEASE #10914
8339378	F-06-67734	4240131519		102-4	103	DURAN #1 RRC LEASE #10827
8339377	F-06-67733	4240131557		102-4	103	DURAN "A" RRC LEASE #10896
8339376	F-06-67732	4236531504		102-4	103	GRAHAM #1 - RRC LEASE #10813
8339375	F-06-67731	4240131469		102-4	103	PRICER A-1 RRC LEASE #10913
-J A WILBURN				RECEIVED:	05/27/83	JA: TX
8339324	F-7B-67604	4215131562		102-4		LEON GOSWICK & CO #1
-J R HAMILTON				RECEIVED:	05/27/83	JA: TX
8339389	F-04-67767	4213100000		102-4		CUELLAR #6
-JOHN L COX				RECEIVED:	05/27/83	JA: TX
8339184	F-7C-06027	4246131945		103		AMERADA NEAL B #1
-K-B EXPLORATION CO				RECEIVED:	05/27/83	JA: TX
8339183	F-02-060248	4228531631		102-4		L E DEBORD #1
-KILLAM & HURD LTD				RECEIVED:	05/27/83	JA: TX
8339368	F-04-67720	4250530914		102-4		BRUNI MINERAL TRUST #1-15
8339367	F-04-67719	4250530871		102-4		BRUNI MINERAL TRUST FEE WELL #1-13
-KILROY CO OF TEXAS				RECEIVED:	05/27/83	JA: TX
8339188	F-03-060866	4270330271		102-4		STATE TRACT 485-L #5-L
8339189	F-03-060907	4270330271		802-4		STATE TRACT 485-L #5-U
-KLH OIL & GAS INC				RECEIVED:	05/27/83	JA: TX
8339267	F-7B-066535	4204933575		102-4		TABER RANCH "A" #106
-KNOX GAS & OIL INC				RECEIVED:	05/27/83	JA: TX
8339265	F-7B-066509	4236732409		102-4		MILLER #2-A
-LAMBERT NOLLUB DRILLING CO				RECEIVED:	05/27/83	JA: TX
8339370	F-03-67726	4205132407		102-4		PERRY #2
-LEWIS & ATKINS OIL & GAS INC				RECEIVED:	05/27/83	JA: TX
8339239	F-7B-065229	4236333069		102-4		MASSEY #1
-LIVELY ENERGY & DEVELOPMENT CORP				RECEIVED:	05/27/83	JA: TX
8339161	F-01-053262	4243500000		103		EPPS #4
-MARIANAS OPERATING CO INC				RECEIVED:	05/27/83	JA: TX

FIELD NAME	PROD	PURCHASER
PANHANDLE (RED CAVE)	2.6	COLORADO INTERSTA
PANHANDLE (RED CAVE)	21.5	COLORADO INTERSTA
LAS TIENDAS	18.0	LONE STAR GAS CO
DANVILLE EAST (PETTIT	46.0	WESTERN GAS CORP
CONROE	93.8	MORAN UTILITIES C
CONROE	73.0	MORAN UTILITIES C
HANSFORD (MORROW UPPE	13.0	NORTHERN NATURAL
FRASS (TONKAWA)	14.8	TRANSWESTERN PIPE
SAND HILLS (MCKNIGHT)	18.0	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	19.0	EL PASO NATURAL G
SAND HILLS (JUDKINS)	15.0	EL PASO NATURAL G
CALANDRIA (E-02)	803.0	ARMCO STEEL CORP
KATY (I-A)	146.0	UNITED TEXAS TRAN
JAMESON (STRAWN)	23.0	
TAJOS (J-14)	876.0	ARMCO STEEL CORP
ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
ROBERTSON N (CLEAR FO	15.0	PHILLIPS PETROLEU
PANHANDLE GRAY	60.0	GETTY OIL CO
BEREND-WOLF (MIDDLE C	32.0	BLUEGROVE GASOLIN
MAMMOTH CREEK NW (TON	310.0	DIAMOND SHAMROCK
HARLETON NORTH EAST (	144.9	TEJAS GAS CORP
DIX RANCH (LOWER WILC	360.8	
FLOWERS (CANYON SAND)	1.8	CITIES SERVICE OI
FLOWERS (CANYON SAND)	2.9	CITIES SERVICE OI
FLOWERS (CANYON SAND)	5.4	CITIES SERVICE OI
FLOWERS (CANYON SAND)	4.4	CITIES SERVICE OI
LEVELLAND SAN ANDRES	3.0	CITIES SERVICE CO
POWELL	328.0	TEXAS UTILITIES F
SAN DIEGO SW (YEGUA)	500.0	UNITED GAS PIPELI
GARVIN (STRAWN)	0.0	LONE STAR GAS CO
SILVER (CANYON)	0.0	SUN OIL CO
KURTEN (GEORGETOWN)	188.8	PRODUCERS GAS CO
GRANITE WASH	0.0	TRANSWESTERN PIPE
KURTEN (WOODBINE)	24.8	PRODUCERS GAS CO
KURTEN (WOODBINE)	19.7	PRODUCERS GAS CO
DYE (WILCOX 8200)	413.0	TENNESSEE GAS PIP
KURTEN (WOODBINE)	36.5	PRODUCERS GAS CO
RED DEER CREEK	0.0	TRANSWESTERN PIPE
KURTEN (AUSTIN CHALK)	36.0	PRODUCERS GAS CO
THOMAS (ATOKA CGL)	0.0	LONE STAR GAS CO
TEX-HAMON (DEAN)	0.0	GETTY OIL CO
TEX-HAMON (DEAN)	0.0	GETTY OIL CO
MCKEE (CLEARFORK LOWE	5.2	NORTHERN GAS PROD
SAWYER (CANYON)	0.0	INTRATEX GAS CO
SAWYER (CANYON)	280.0	INTRATEX GAS CO
SAWYER (CANYON)	200.0	INTRATEX GAS CO
FORD WEST (4100)	6.0	CONOCO INC
FORD WEST (4100)	6.0	CONOCO INC
AMACKER-TIPPETT SW (W	150.0	
ROSE CREEK N	18.0	SUN EXPLORATION &
ROSE CREEK N	36.0	SUN EXPLORATION &
ROSE CREEK N	18.0	SUN EXPLORATION &
ITEX (PETTET)	54.8	EASTEX GAS TRANSM
ITEX (PETTET)	54.8	EASTEX GAS TRANSM
ITEX (PETTET)	54.8	EASTEX GAS TRANSM
ITEX (PETTET)	54.8	EASTEX GAS TRANSM
ITEX (PETTET)	54.8	EASTEX GAS TRANSM
SHAR-LYN (STRAWN)	50.0	LONE STAR GAS CO
J R (4070)	100.0	VALERO TRANSMISSI
BENEDUM (FUSSELMAN)	10.0	PHILLIPS PETROLEU
NORTHEAST HOPE	260.0	VALERO TRANSMISSI
DAVIS S (5500)	0.0	TENNESSEE GAS PIP
DAVIS S (5500)	0.0	TENNESSEE GAS PIP
MATAGORDA ISLAND BLOC	738.0	VALLEY PIPELINES
MATAGORDA ISLAND BLOC	497.0	VALLEY PIPELINES
DILLARD (MARBLE FALLS	88.0	EL PASO HYDROCARB
DENNIS WEST (STRAWN)	51.0	TEXAS UTILITIES F
HOOKER CREEK (NAVARRO	37.8	FERGUSON CROSSING
MINERAL WELLS S (4270	300.8	LIQUID ENERGY COR
HOLMAN RANCH N (PENN)	36.5	INTRATEX GAS CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8339274	F-7B-066898	4208333398		102-4		HUDSON "C" #1
8339275	F-7B-066931	4208333335		102-4		SNEED #1
-MAY PETROLEUM INC				RECEIVED:	05/27/83	JA: TX
8339329	F-04-67653	4204731220		102-4		VILLARREAL #1 (104278)
-MCCLYMOND BROTHERS				RECEIVED:	05/27/83	JA: TX
8339323	F-7B-67569	4241734881		103		ELLIS-FARMER "D" 104126
-MCZ INC				RECEIVED:	05/27/83	JA: TX
8339371	F-03-67727	4204100000		102-2		CHATHAM UNIT #1-L
-NEWBOURNE OIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339169	F-10-053172	4229531156		103		AKERS #2 RRC ID #N/A
8339280	F-10-067049	4229531173		102-4	103	SCHULTZ "716" #3 RRC ID #05323
8339194	F-10-061529	4229531192		102-4		SCHULTZ "716" #4 RRC ID # N/A
8339281	F-10-067041	4229531191		102-4	103	SCHULTZ "716" #5 RRC ID #05323
-MITCHELL ENERGY CORPORATION				RECEIVED:	05/27/83	JA: TX
8339257	F-7C-066041	4243532921		103	107-TF	ARCO-PHILLIPS 23 #3
8339276	F-09-066954	4249732120		103		C W SLAY #1
8339373	F-09-67729	4249700000		108		CARL BARKSDALE #2 21912
8339411	F-02-67849	4217500000		108		GLEM KACZMAREK #1 06212
8339374	F-09-67730	4249700000		108		FLORENCE CURRIE #2 #096634
8339261	F-09-066240	4249732473		103		J D KARNES #7-U
8339372	F-09-67728	4249700000		108		V D ROSS #1 #040147
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	05/27/83	JA: TX
8339316	F-08-067475	4246131974		103		HARDWICKE-UNIVERSITY SEC 48 #14
-MONTERREY PETROLEUM CORP				RECEIVED:	05/27/83	JA: TX
8339192	F-04-061483	4247932934		102-2	107-TF	APACHE #3
8339191	F-04-061557	4247933500		107-TF		APACHE #5
-MORROW RESOURCES INC				RECEIVED:	05/27/83	JA: TX
8339287	F-7C-067106	4245131156		102-2	103	BROWN #10
8339227	F-7C-064426	4245100000		102-2	103	MATHEWS "C" #1
8339286	F-7C-067105	4245131154		102-2	103	MATHEWS "C" #2
-MOTE RESOURCES INC				RECEIVED:	05/27/83	JA: TX
8339253	F-09-065922	4249732480		103		HOPKINS #1
-NATIONAL OIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339182	F-04-060071	4221531265		102-4		GREGORY UNIT #1-C
-NORTH STAR PETROLEUM CORPORATION				RECEIVED:	05/27/83	JA: TX
8339238	F-10-065224	4223300000		103		SKELLY-MERCHANT #7 (80989)
-NUGGET OIL CORP				RECEIVED:	05/27/83	JA: TX
8339282	F-02-067060	4217531701		102-4		PEREIRA #2 (ID # NOT ASSIGNED)
-OGO PRODUCTION				RECEIVED:	05/27/83	JA: TX
8339258	F-7B-066143	4205931966		102-4		MCCLURE AAA #1 (16624)
-PAUL E CAMERON JR INC				RECEIVED:	05/27/83	JA: TX
8339237	F-02-065218	4202500000		102-4		BALL #1
8339242	F-02-065312	4202500000		102-4		BALL #2
-PEARSON-SIBERT OIL CO OF TEXAS				RECEIVED:	05/27/83	JA: TX
8339384	F-7C-67761	4208131158		103		PRICE "C" #1
-PENNZOIL COMPANY				RECEIVED:	05/27/83	JA: TX
8339273	F-08-066860	4237133780		102-4		NUTT I-16
-PETRO VEST INC				RECEIVED:	05/27/83	JA: TX
8339216	F-02-063325	4223931821		102-4		PETRO VEST - HESS #3
-PETROLEUM EQUITIES CORP				RECEIVED:	05/27/83	JA: TX
8339383	F-7C-67757	4210500000		108		HENDERSON "C" #1
-PETRUS OPERATING CO INC				RECEIVED:	05/27/83	JA: TX
8339412	F-05-67850	4234933075		102-4		CARPENTER #6
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/27/83	JA: TX
8339163	F-09-054015	4249700000		108-PB		BLANION A #1
-PIONEER PRODUCTION CORPORATION				RECEIVED:	05/27/83	JA: TX
8339153	F-10-052244	4229500000		108-PB		MUGG ESTATE #1
8339145	F-10-041791	4229500000		108-PB		REDELSPERGER #1
-PRAIRIE PRODUCING CO				RECEIVED:	05/27/83	JA: TX
8339256	F-06-065987	4234700000		102-4		A M FOSHEE #2-T
8339325	F-06-67632	4234730759		102-4		FOSHEE #1-A
8339270	F-05-066711	4237900000		102-4		HUDDLESTON #1
-PYRO ENERGY CORP				RECEIVED:	05/27/83	JA: TX
8339295	F-01-067255	4217731063		102-4		L F BURCHARD #2 07520
8339300	F-04-067257	4217731116		102-4		L F BURCHARD #5 07520
8339299	F-01-067256	4217731134		102-4		L F BURCHARD #6 (07520)
-PYRON EXPLORATION & DRILLING CORP				RECEIVED:	05/27/83	JA: TX
8339322	F-09-67568	4250338970		102-4		DEATS #3
-R H ENGELKE				RECEIVED:	05/27/83	JA: TX
8339321	F-02-67566	4223931692		102-4		SCHUECH IRMA #1
-RANKIN OIL CO				RECEIVED:	05/27/83	JA: TX
8339403	F-08-67810	4200332026		103		BASSEL 3
8339369	F-08-67723	4200332648		103		PEBSWORTH B 2
-REAGAN WASKOM JR				RECEIVED:	05/27/83	JA: TX
8339410	F-08-67847	4243131260		103		MCENTIRE #1 RRC LSE #27961
-REYNOLDS DRLG CO & ENI EXPL CO				RECEIVED:	05/27/83	JA: TX
8339279	F-06-067022	4240131375		103	107-TF	ARNOLD-RUST UNIT 2 WELL #2
-RIDGE OIL CO				RECEIVED:	05/27/83	JA: TX
8339232	F-7B-064959	4242933552		102-4	103	BRITTAIN #1
8339233	F-7B-065007	4213334520		102-4	103	CONWAY #1
-RIO PETROLEUM INC				RECEIVED:	05/27/83	JA: TX
8339177	F-10-058494	4217931161		103		MANDY #1
-RIO-TEX INC				RECEIVED:	05/27/83	JA: TX
8339260	F-01-066215	4249331176		102-4		CUMMINGS #1
-ROBERT P LAMMERTS				RECEIVED:	05/27/83	JA: TX
8339185	F-03-060329	4214900000		102-2		HOUGHTON #2
-ROBERT RANSONE INC				RECEIVED:	05/27/83	JA: TX
8339310	F-09-067300	4233731991		103		EVANS #1
8339309	F-09-067299	4233731951		103		MEADOR #1
-S K TUTHILL & B J BARBEE				RECEIVED:	05/27/83	JA: TX
8339317	F-7C-067481	4223532043		102-4		WINTERBOTHAM "C" 2-1
-SAG ENERGY INC				RECEIVED:	05/27/83	JA: TX
8339264	F-7B-065459	4236732314		102-4		BYRD #1
-SAGE ENERGY CO				RECEIVED:	05/27/83	JA: TX
8339219	F-05-063363	4214931428		102-2		FLOWERS #1 RRC #16393
8339256	F-03-065958	4214900000		102-2		PLUM "M" UNIT #1
8339423	F-7C-67892	4238332477		103		UNIVERSITY 12-G #2 RRC #08889
8339422	F-7C-67891	4238332470		103		UNIVERSITY 18-G #4 RRC #09558
8339421	F-7C-67890	4238332467		103		UNIVERSITY 19-G #3 RRC #09434
8339420	F-7C-67889	4238332368		103		UNIVERSITY 19-GA #2 RRC #09827
8339419	F-7C-67888	4238332369		103		UNIVERSITY 19-GA #3 RRC #09827
8339418	F-7C-67887	4238332474		103		UNIVERSITY 22-A #2 RRC #08535
8339417	F-7C-67886	4238332466		103		UNIVERSITY 23-B #2 RRC #07705
8339416	F-7C-67885	4238332465		103		UNIVERSITY 23-B #3 RRC #07705

FIELD NAME	PROD	PURCHASER
WILDCAT	58.0	UNION TEXAS PETRO
WILDCAT	42.0	EL PASO HYDROCARB
PARRITA (7300)	182.5	
FRANK DOSS DUFFER	130.0	DELHI GAS PIPELIN
BRYAN M (GEORGETOWN)	365.0	FERGUSON CROSSING
MAMMOTH CREEK NORTH (	985.0	TRANSWESTERN PIPE
SKUNK CREEK (CLEVELAN	5.0	TRANSWESTERN PIPE
WILDCAT (TONKAWA)	54.0	TRANSWESTERN PIPE
SKUNK CREEK (CLEVELAN	0.0	TRANSWESTERN PIPE
ALDWELL RANCH (CANYON	150.0	VALERO TRANSMISSI
NEUARK EAST (BARNETT	20.0	NATURAL GAS PIPEL
BARROW (STRAWN)	0.0	UPHAM OIL & GAS C
BRANDT (YEQUA 4700)	0.0	TEXAS EASTERN TRA
BOONSVILLE (BEND CONG	8.0	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	366.7	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
MCELROY	22.3	PHILLIPS PETROLEU
GOLD RIVER NORTH (OLM	0.0	SEAGULL PIPELINE
GOLD RIVER NORTH (OLM	0.0	SEAGULL PIPELINE
K W B (STRAWN)	0.0	LONE STAR GAS CO
KWB (STRAWN)	0.0	LONE STAR GAS CO
K W B (STRAWN)	0.0	LONE STAR GAS CO
SUNSET (CONGLOMERATE)	40.0	NATURAL GAS PIPEL
SHEPARD TRIO 7400	320.0	VALERO INTERSTATE
PANHANDLE	0.0	PHILLIPS PETROLEU
DIAL FIELD (HOCKLEY 3	73.0	UNITED GAS PIPE L
NICHOLAS (DUFFER)	6.0	EL PASO HYDROCARB
BERCLAIR S (2700)	109.0	HOUSTON PIPELINE
BERCLAIR S W (2350)	92.0	HOUSTON PIPELINE
FRANK PEARSON (STRAWN	13.9	SUN EXPLORATION &
NUZ (WOLFCAMP)	985.9	UNITED TEXAS TRAN
MAYO 5655'	180.0	TEXAS EASTERN TRA
OZONA (CANYON SAND)	21.8	NORTHERN NATURAL
INGRAM TRINITY (RODES	0.0	DELHI GAS PIPELIN
MORRIS	0.0	C R UPHAM OIL & G
MAMMOTH CREEK	0.0	NORTHERN NATURAL
MAMMOTH CREEK	0.0	NORTHERN NATURAL
NACONICHE CREEK (RODE	0.0	UNITED GAS PIPE L
NACONICHE CREEK (TRAV	0.0	UNITED GAS PIPE L
S E GINGER (SMACKOVER	1500.0	
CHRISTIAN (6800)	0.0	VALERO TRANSMISSI
CHRISTIAN (6800)	0.0	VALERO TRANSMISSI
CHRISTIAN (6800)	0.0	VALERO TRANSMISSI
DAKIN (BUTTRAM LO)	21.0	MID-STATE GAS COR
	13.0	FLORIDA GAS TRANS
FUHRMAN-MASCHO (SAN A	2.0	PHILLIPS PETROLEU
NIX SOUTH (CLEARFORK)	19.0	PHILLIPS PETROLEU
MCENTIRE (FUSSELMAN)	290.0	ESPERANZA PIPELIN
NORTH TATUM (COTTON V	0.0	UNITED GAS PIPE L
RANGER (BLACK LIME WE	15.8	COMPRESSOR RENTAL
RANGER (BLACK LIME WE	10.8	COMPRESSOR RENTAL
PANHANDLE EAST	0.0	CITIES SERVICE CO
CINDY ANN (AUSTIN CHA	300.0	J L DAVIS
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
BOEDEKER S E (VIOLA L	18.0	LONE STAR GAS CO
BOEDEKER S E (VIOLA L	18.0	LONE STAR GAS CO
BUTTES NORTH	73.0	FARMLAND INDUSTRI
MOBY DICK (CONGL)	175.0	SOUTHWESTERN GAS
GIDDINGS (AUSTIN CHAL	2.7	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
FARMER (SAN ANDRES)	0.5	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.4	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.1	NORTHERN NATURAL
FARMER (SAN ANDRES)	0.4	NORTHERN NATURAL
FARMER (SAN ANDRES)	0.5	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.2	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.8	NORTHERN NATURAL
FARMER (SAN ANDRES)	2.2	NORTHERN NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8339415	F-7C-67884	42383532464		103		UNIVERSITY 23-B #4 RRC #07705
8339414	F-7C-67883	42105534336		103		UNIVERSITY 23-C #3 RRC #09620
8339424	F-7C-67893	42383532478		103		UNIVERSITY 9-G #2 RRC #07755
-SEELY OIL CO				RECEIVED:	05/27/83	JA: TX
8339241	F-7B-065300	42429335S4		102-4		BLACK "27" #6
-SHARON LEASE OIL CO				RECEIVED:	05/27/83	JA: TX
8339413	F-10-67879	4217931342		103		SHARON #4 (ID #04695)
-SHELLMAN DRILLING CO				RECEIVED:	05/27/83	JA: TX
8339236	F-03-065213	4214900000		103		E A ARNIM #9
-SIX-M-CO				RECEIVED:	05/27/83	JA: TX
8339212	F-7B-063043	4236732337		102-4		L B HERRING #1-A
-SMITH PETROLEUM CO				RECEIVED:	05/27/83	JA: TX
8339207	F-03-062840	4218530322		102-4		SELECTED LANDS 18 UNIT #4
8339235	F-03-065183	4218530326		102-4		SELECTED LANDS 18 UNIT 5 #1
-SOHIO PETROLEUM CO				RECEIVED:	05/27/83	JA: TX
8339361	F-7C-67712	4238532458		103		E G CAUBLE "A" #7
8339339	F-7C-67669	4217331333		103		M V BRYANS "B" #7
8339362	F-7C-67713	4217331381		103		X B COX "C" #5
-STAFFORD CLAYTON & HAWLEY				RECEIVED:	05/27/83	JA: TX
8339297	F-10-067185	4217931270		103		TAYLOR RANCH (HJC) #2
-STAHL PETROLEUM CO				RECEIVED:	05/27/83	JA: TX
8339311	F-10-067315	4217931288		103		REEVES HEIRS #1
-TAMARACK PETROLEUM CO INC				RECEIVED:	05/27/83	JA: TX
8339360	F-7C-67710	4246131772		103		EXXON COWDEN "D" #2 (RRC #098033)
8339359	F-08-67709	4231732589		103		KENNEDY (RRC #27945)
-TEXACO INC				RECEIVED:	05/27/83	JA: TX
8339161	F-06-035378	4236530297		103		T C ADAMS NCT-1 WELL #41
8339171	F-04-056111	4226130487		102-4		YTURRIA L&C CO NCT-1 #41
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	05/27/83	JA: TX
8339172	F-03-056114	4214900000		102-2		H T CALLEY #1
8339162	F-03-053874	4205100000		102-2		LODEN #2
8339154	F-06-052335	4240100000		103	107-TF	WILLIAMSON #2
-TEXOMA PRODUCTION CO				RECEIVED:	05/27/83	JA: TX
8339231	F-03-064869	4216700000		102-2		STATE TRACT 220-L #1
-THOMAS C CANAN				RECEIVED:	05/27/83	JA: TX
8339277	F-7B-066964	4213300000		102-4		CITY OF CISCO #1
8339308	F-7B-067285	4242933436		102-4		MUNNERLYN #2
-THOMPSON J CLEO & JAMES CLEO JR				RECEIVED:	05/27/83	JA: TX
8339259	F-7C-066209	4210533950		103	107-TF	UNIVERSITY 31-29E #2
-TRI-MOR PRODUCTION CO				RECEIVED:	05/27/83	JA: TX
8339319	F-7B-67526	4242933276		103		DOSHIER "A" #1 (19500)
-TRIAX OIL & GAS INC				RECEIVED:	05/27/83	JA: TX
8339169	F-7B-055741	4208332689		102-4	103	HUNTER-FEE #1
-TRIPLE J INVESTMENTS INC				RECEIVED:	05/27/83	JA: TX
8339398	F-06-67774	4240100000		103		BLACKWELL #2
-TSCHOEPE ARTHUR J				RECEIVED:	05/27/83	JA: TX
8339268	F-02-066645	4246931884		102-4		HASCHKE #1
-TXO PRODUCTION CORP				RECEIVED:	05/27/83	JA: TX
8339203	F-03-062558	4219931799		102-4		DEUSSEN #1
8339205	F-02-062671	4229700000		102-4		MCCLELLAND 19
8339175	F-02-058089	4223931326		102-4		STAFFORD A-1
-UNION DOMINION OIL CORP				RECEIVED:	05/27/83	JA: TX
8339166	F-03-054554	4214931180		102-2		PAUL J BATTAGLIA #1
-UNION EXPLORATION				RECEIVED:	05/27/83	JA: TX
8339243	F-7B-065385	4205934031		102-4		PRINDLE "B" #5
-UNION TEXAS PETROLEUM				RECEIVED:	05/27/83	JA: TX
8339180	F-7C-059308	4223500000		102-4		SHEEN "3061" #1
8339181	F-7C-059309	4223500000		102-4		SUGG "4" #1
-W C S PETROLEUM INC				RECEIVED:	05/27/83	JA: TX
8339222	F-03-064170	4228731325		102-2		LEOLA #1
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	05/27/83	JA: TX
8339402	F-08-67806	4210333099		103		M B MCKNIGHT #140
-WCS PETROLEUM CO				RECEIVED:	05/27/83	JA: TX
8339234	F-03-065159	4214931478		102-2		TANNER UNIT #2
-WESTERN CHIEF OIL & GAS CO				RECEIVED:	05/27/83	JA: TX
8339204	F-09-062577	4223734820		102-4		C R SWAN 1-A
-WINN EXPLORATION/DULCE CO				RECEIVED:	05/27/83	JA: TX
8339226	F-01-064306	4250731794		102-4		PRYOR RANCH #115-C
8339225	F-01-064305	4250731794		102-4		PRYOR RANCH #115-T
8339224	F-01-064304	4250731812		102-4		PRYOR RANCH #121-C
8339223	F-01-064303	4250731812		102-4		PRYOR RANCH #121-T
-WY-VEL CORP				RECEIVED:	05/27/83	JA: TX
8339391	F-10-67784	4223331504		103		SOUTHLAND (04341) #14
-ZONERGY INC				RECEIVED:	05/27/83	JA: TX
8339240	F-03-065252	4205100000		102-2		J R UNIT #1
**********						
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO						
**********						
-LOMAX EXPLORATION COMPANY				RECEIVED:	05/31/83	JA: UT 1
8339425	UD 0024-83	4301330608		102-2		FEDERAL #3-35

FIELD NAME	PROD	PURCHASER
FARMER (SAN ANDRES)	1.6	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.6	NORTHERN NATURAL
FARMER (SAN ANDRES)	1.4	NORTHERN NATURAL
LAURA C (MISS)	27.4	GREAT WESTERN GAS
PANHANDLE GRAY	100.0	CABOT PIPELINE CO
S W MULDOON (COCKRILL	0.0	CLAJON GAS CO
DENNIS SW (4370)	68.0	INTRASTATE GATHER
IOLA SOUTH (SUBCLARKS	200.0	MARCON ENERGY INC
LOLA SMITH (SUBCLARKS	188.0	WELLHEAD VENTURES
CALVIN (DEAN)	91.0	EL PASO NATURAL G
CALVIN (DEAN)	50.0	EL PASO NATURAL G
CALVIN (DEAN)	23.0	EL PASO NATURAL G
WEST PANHANDLE	150.0	PHILLIPS PETROLEU
WEST PANHANDLE	0.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	12.0	EL PASO NATURAL G
SPRABERRY (TREND AREA	12.0	PHILLIPS PETROLEU
BETHANY E (COTTON VAL	250.0	UNITED GAS PIPE L
CABAZOS (A-6)	392.0	TENNESSEE GAS PIP
GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO *
GIDDINGS (BUDA)	0.0	CLAJON GAS CO
DIRGIN (COTTON VALLEY	0.0	DELHI GAS PIPELIN
WILDCAT	1000.0	
HANVEY (CONGL)	91.0	EL PASO HYDROCARB
MUNNERLYN	16.4	WARREN PETROLEUM
OZONA (CANYON SAND)	97.0	PHILLIPS PETROLEU
BRECKENRIDGE SE (DUFF	25.0	WARREN PETROLEUM
CAMP COLORADO N (DUFF	9.1	SOUTHWESTERN GAS
NASEEP THOMAS (PETTIT	48.0	PARADE CO
WILDCAT (RICHARD ADCO	130.0	
ARRIOLA (VICKSBURG 70	0.0	DELHI GAS PIPELIN
OAKVILLE (WILCOX 9700	0.0	DELHI GAS PIPELIN
MORALES (3670')	0.0	TENNESSEE GAS PIP
GIDDINGS EDWARDS (GAS	0.0	CLAJON GAS CO
WILDCAT	14.0	LONE STAR GAS COM
BURNT ROCK (CANYON)	250.0	FARMLAND INDUSTRI
BURNT ROCK (CANYON "B	66.8	FARMLAND INDUSTRI
GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
SAND HILLS (MCKNIGHT)	0.9	EL PASO NATURAL G
GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
TJN STRAWN	2000.0	SOUTHWESTERN GAS
WINN-DULCE	0.0	NORTHERN NATURAL
WINN-DULCE (DEL MONTE	0.0	NORTHERN NATURAL
WINN-DULCE	0.0	NORTHERN NATURAL
WINN-DULCE	0.0	NORTHERN NATURAL
PANHANDLE	0.4	PHILLIPS PETROLEU
BIG -A- TAYLOR	0.0	CLAJON GAS CO
MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP

[FR Doc. 83-17027 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 919]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: June 20, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contract Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS
ISSUED JUNE 20, 1983
VOLUME 919

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED:	06/03/83	JA: TX			
8339534	F-09-067165	4209732161		102-4	103	BURRELL #2	DELAWARE BEND NORTH (	110.0	LONE STAR GAS CO
-AEGEAN OIL CORP				RECEIVED:	06/03/83	JA: TX			
8339524	F-01-066875	4217731395		102-2	103	LARRY J MERCER UNIT #1	PEACH CREEK (BUDA)	219.0	SUNBURST ENERGIES
-AM QUEST CORP				RECEIVED:	06/03/83	JA: TX			
8339570	F-05-67681	4216130716		103	107-TF	B P YORK #1	MIM'S CREEK (BOSSIER)	730.0	SEAGULL PIPELINE
8339473	F-02-64625	4223931476		102-4	103	SYLVAN GURINSKY #1 (ID# PENDING)	ROSE (FRIO 6815) FIEL	211.0	UNITED GAS PIPELI
-AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED:	06/03/83	JA: TX			
8339467	F-02-63714	4217531675		103		IDEUS UNIT #3 WELL	SLICK EAST	110.0	UNITED GAS PIPE L
-AMOCO PRODUCTION CO				RECEIVED:	06/03/83	JA: TX			
8339543	F-7C-67329	4213730838		103		C O WHITWORTH #10	SAWYER CANYON	164.0	LONE STAR GAS CO
8339666	F-08-068075	4249531561		103		IDA HENDRICK T-88 GX#8	HENDERSON	0.0	CABOT CORP
8339535	F-08-067177	4200333418		103		MIDLAND FARMS "BC" #1-A	FASKEN (PENN)	0.1	AMOCO PRODUCTION
8339633	F-10-068017	4242100000		108		SHOUP GAS UNIT #1	HUGOTON	18.0	PHILLIPS PETROLEU
-ANDCO OIL				RECEIVED:	06/03/83	JA: TX			
8339619	F-10-067974	4217931282		103		GEORGIA #1 (05269)	PANHANDLE GRAY COUNTY	91.0	GETTY OIL CO
-ARCO OIL AND GAS COMPANY				RECEIVED:	06/03/83	JA: TX			
8339441	F-01-56986	4231131533		102-4		D W RHODE 18 #5	RHODE RANCH EAST (WIL	200.0	HOUSTON PIPELINE
-B & W EXPLORATION				RECEIVED:	06/03/83	JA: TX			
8339466	F-7B-063667	4209300000		103		JON R COAN #1	MITTIE (MARBLE FALLS)	0.0	LONE STAR GAS CO
-B J GIERHART INC				RECEIVED:	06/03/83	JA: TX			
8339452	F-03-62148	4205100000		102-2		DUNCAN "A" #2	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-BARBEE INC				RECEIVED:	06/03/83	JA: TX			
8339581	F-7B-67814	4225332201		102-4		BARKLEY #1	TRUBY SW (STRAWN A)	3.6	CONOCO INC
8339583	F-7B-067816	4225331714		102-4		RAMSEY W D #1	TRUBY S W (STRAWN A)	9.0	CONOCO INC
8339580	F-7B-67812	4225332264		102-4		SHANNON #1	TRUBY S W (STRAWN A)	25.2	CONOCO INC
8339582	F-7B-67815	4225300000		102-4		TOUCHSTONE #1	TRUBY S W (STRAWN A)	5.4	CONOCO INC
-BOGE CO				RECEIVED:	06/03/83	JA: TX			
8339481	F-7B-65303	4208332462		103		GASSIOTT MAURICE #1	BERRYMAN (KICHI CREEK	36.0	UNION TEXAS NATUR
8339508	F-7B-066326	4208300000		103		ODELL COLLINS #1	BERRYMAN (KICHI CREEK	40.0	EL PASO HYDROCARB
-BRIDWELL OIL CO				RECEIVED:	06/03/83	JA: TX			
8339429	F-04-024502	4224900000		108-ER		N A HOFFMAN "L" #3	BEN BOLT WEST (5400)	44.0	VALLEY GAS TRANSM
-BUCK WHEAT RESOURCES INC				RECEIVED:	06/03/83	JA: TX			
8339584	F-7B-067854	4236300000		103		GRAVES #1	BRAD SW (BIG SALINE C	300.0	SOUTHWESTERN GAS
-BURRELL & ICE				RECEIVED:	06/03/83	JA: TX			
8339548	F-08-67343	4238900000		108		J H HODGE #1	WAHA (DELAWARE)	0.0	TRANWESTERN PIPEL
-BYS INC				RECEIVED:	06/03/83	JA: TX			
8339544	F-04-67332	4213131968		108		HUMBLE-DOWDY FEE #2 RRC NO 119837	SEVEN SISTERS (2200)	11.7	TENNESSEE GAS PIP
-CARTER EXPLORATION CO				RECEIVED:	06/03/83	JA: TX			
8339526	F-04-066933	4235532093		102-4	103	RALF ANDREWS #1	CLARA DRISCOLL SE (67	100.0	VALLEY GAS TRANSM
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	06/03/83	JA: TX			
8339435	F-06-49065	4236500000		103	107-TF	CARTHAGE GAS UNIT 9 93	CARTHAGE (COTTON VALL	0.0	TENNESSEE GAS PIP
-CHARLES M CHILDERS				RECEIVED:	06/03/83	JA: TX			
8339572	F-7C-67701	4239932088		108		H A BRYAN #1	CAROLYN (ELLEN)	3.3	UNION TEXAS PETRO
-CHARLES PITTS CO				RECEIVED:	06/03/83	JA: TX			
8339528	F-7B-064961	4204933387		102-4		PITTS BROTHERS #2	GROSVENOR SW (DUFFER)	27.0	EL PASO HYDROCARB

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CONOCO INC									
8339490	F-10-65701	4217900000		RECEIVED:	06/03/83	JA: TX			
8339518	F-10-066746	4206500000		108		BARRETT E C #1	PANHANDLE WEST	21.0	NORTHWEST CENTRAL
8339517	F-10-066745	4206500000		108		BURNETT #36	PANHANDLE WEST	21.0	NORTHWEST CENTRAL
8339516	F-10-066744	4206500000		108		BURNETT #59A	PANHANDLE WEST	21.0	NORTHWEST CENTRAL
8339515	F-10-066743	4206500000		108		BURNETT #86A	PANHANDLE WEST	21.0	NORTHWEST CENTRAL
8339448	F-04-61950	4247933431		108		BURNETT #91	PANHANDLE WEST	21.0	NORTHWEST CENTRAL
8339577	F-08-67799	4238931365		102-2	107-TF	VAQUILLAS RANCH A #29	GATO CREEK (LOBO 1)	766.5	E I DUPONT DENEMO
-CYCLONE EXPLORATION INC				102-4	103	W E BELL "44" #18 (27756)	JESS BURNER (DELAWARE	35.4	EL PASO NATURAL G
8339561	F-7C-67581	4243532882		RECEIVED:	06/03/83	JA: TX			
-DAKKAR PRODUCTION CO				103	107-TF	JOHN D FIELDS 3-48	SAWYER (CANYON)	140.0	EL PASO NATURAL G
8339553	F-10-67462	4217900000		RECEIVED:	06/03/83	JA: TX			
-DORCHESTER EXPLORATION INC				103		MOBIL BARRETT #1	PANHANDLE GRAY	22.0	CABOT CORP
8339497	F-08-065965	4243131069		RECEIVED:	06/03/83	JA: TX			
-DRIVER OIL & GAS INC				103		WESTBROOK 32-3	CONGER (PENN)	36.5	TEXAS UTILITIES F
8339457	F-02-63889	4246931885		RECEIVED:	06/03/83	JA: TX			
-DYNEX ENERGY INC				103		DRIVER OIL & GAS F H BURNS "A" #2	PRIDHAM LAKE VICTORIA	91.0	SUNBURST ENERGIES
8339585	F-06-066097	4240100000		RECEIVED:	06/03/83	JA: TX			
8339584	F-06-066098	4236500000		102-4	103	JOHN PRICER #1 RRC PERMIT #131914	ITEX	0.0	EASTEX GAS TRANSM
-ECHO PRODUCTION INC				102-4	103	JONES BROTHERS ET AL #2 RRC #173298	ITEX	0.0	EASTEX GAS TRANSM
8339665	F-09-068066	4249732450		RECEIVED:	06/03/83	JA: TX			
8339677	F-09-068122	4249732449		103		JACKSON #1 104627	BOONESVILLE (BEND CON	73.0	LONE STAR GAS CO
-ENERGETICS INC				103		KINSEY #1 104626	BOONESVILLE (BEND CON	73.0	LONE STAR GAS CO
8339631	F-10-068013	4237530900		RECEIVED:	06/03/83	JA: TX			
8339630	F-10-068012	4237530895		103		MASTERSON G-44 (03839)	PANHANDLE (RED CAVE)	6.4	COLORADO INTERSTA
8339628	F-10-068010	4237530908		103		MASTERSON G-50 (03839)	PANHANDLE (RED CAVE)	20.7	COLORADO INTERSTA
8339629	F-10-068011	4237530907		103		MASTERSON G-55 (03839)	PANHANDLE (RED CAVE)	13.5	COLORADO INTERSTA
8339632	F-10-068014	4234130909		103		MASTERSON G-56 (03839)	PANHANDLE (RED CAVE)	17.1	COLORADO INTERSTA
-ENERGY RESERVES GROUP INC				103		MASTERSON H-25 (03839)	PANHANDLE (RED CAVE)	19.7	COLORADO INTERSTA
8339634	F-01-068021	4228300351		RECEIVED:	06/03/83	JA: TX			
-ENERGY RESOURCES OIL & GAS CORP				108		D S PETTY "A" #4	STUART CITY	21.9	TRANSCONTINENTAL
8339455	F-7C-62725	4210533858		RECEIVED:	06/03/83	JA: TX			
8339456	F-7C-62726	4210533858		103	107-TF	JACK RIGGS #1-30 U	BAGGETT (CANYON)	110.8	NORTHERN NATURAL
-ENSERCH EXPLORATION INC				103		JACK RIGGS #1-30L	JOE T (STRAWN)	365.0	NORTHERN NATURAL
8339595	F-09-067925	4223700000		RECEIVED:	06/03/83	JA: TX			
8339594	F-09-067924	4223700000		108		BELLE ALSTOT #3	BOONSVILLE	5.0	LONE STAR GAS CO
8339592	F-09-067922	4223700000		108		BELLE ALSTOT #4	BOONSVILLE	1.0	LONE STAR GAS CO
8339588	F-09-067918	4223700000		108		DELLA CHRISTIAN #1	BOONSVILLE	15.0	LONE STAR GAS CO
8339587	F-09-067917	4223700000		108		E L WILCOCKSON "A" #1	BOONSVILLE	5.0	LONE STAR GAS CO
8339591	F-09-067921	4223700000		108		L H YATES #2	BOONSVILLE	7.0	LONE STAR GAS CO
8339589	F-09-067919	4223700000		108		M DURHAM #5	BOONSVILLE	12.0	LONE STAR GAS CO
8339590	F-09-067920	4223700000		108		M DURHAM #6	BOONSVILLE	8.0	LONE STAR GAS CO
8339593	F-09-067923	4223700000		108		M DURHAM #9	BOONSVILLE	6.0	LONE STAR GAS CO
-EXXON CORPORATION				108		T H CHERRYHOMES #1	BOONSVILLE	10.0	LONE STAR GAS CO
8339678	F-03-068123	4207131391		RECEIVED:	06/03/83	JA: TX			
8339586	F-8A-067913	4203330862		103		A D MIDDLETON A/C 1 #98	ANAHUAC	18.3	ARMCO STEEL CORP
8339681	F-03-068126	4233930564		102-4		COLEMAN FARMS #1-A	APEX (FUSSELMAN)	11.0	
8339680	F-03-068125	4233930544		103		CONROE FIELD UNIT #1937	CONROE	0.1	MORAN UTILITIES C
8339541	F-08-67291	4200333202		103		CONROE FIELD UNIT #2717	CONROE	0.1	MORAN UTILITIES C
8339547	F-04-67338	4226130760		103		FULLERTON CLEARFORK UNIT #2523	FULLERTON	15.0	PHILLIPS PETROLEU
8339546	F-04-67337	4226130760		103		JOHN G KENEDY JR "E" 40-D	EL PAISTLE (J-28)	325.0	NATURAL GAS PIPEL
8339566	F-04-67665	4226130733		102-4		JOHN G KENEDY JR "E" 40-F	EL PAISTLE (H-21)	360.0	NATURAL GAS PIPEL
8339616	F-04-067960	4227331710		103		JOHN G KENEDY JR "H" 3	SANTA ROSA (J-99)	250.0	NATURAL GAS PIPEL
8339613	F-04-067957	4226130490		103		K R BORREGOS 584 (104377)	BORREGOS (N-10 E)	91.0	ARMCO STEEL CORP
8339611	F-04-067955	4226130571		102-4		K R SAN JOSE DE LA PARRA 24-F104180	CALANDRIA (F-49)	650.0	ARMCO STEEL CORP
8339614	F-04-067958	4226130784		103		K R SAN JOSE DE LA PARRA 31-D104172	CALANDRIA (H-72)	135.0	ARMCO STEEL CORP
8339612	F-04-067956	4226130785		103		K R SAN JOSE DE LA PARRA 49 104171	CALANDRIA (H-59)	438.0	ARMCO STEEL CORP
8339617	F-04-067962	4226130714		102-4		K R SAN JOSE DE LA PARRA 50-D104378	CALANDRIA (G-15)	285.0	ARMCO STEEL CORP
8339618	F-04-067963	4226130753		103		K R TIO MOYA 11 (104165)	CALANDRIA (H-59)	130.0	ARMCO STEEL CORP
8339615	F-04-067959	4226130779		103		K R TIO MOYA 14 (104185)	CALANDRIA (H-59)	584.0	ARMCO STEEL CORP
8339679	F-03-068124	4247300000		103		K R TIO MOYA 16 (104179)	CALANDRIA (H-59)	400.0	ARMCO STEEL CORP
8339487	F-7C-65611	4243131253		103		KATY GAS FIELD CONS UNIT #4404-F	KATY (COCKFIELD UPPER	730.0	ARMCO STEEL CORP
8339545	F-04-67333	4226130752		103		LOU E JOHNSON ESTATE A/C 1 #38	JAMESON (STRAWN)	17.0	
8339569	F-7C-67679	4223531631		102-4		MRS S K EAST 143 (ID PENDING)	RITA (11-S III-B)	128.0	NATURAL GAS PIPEL
8339568	F-08-67678	4247532756		103		PEARL WILLIAMS B #14	DOVE CREEK SOUTH (650	8.0	
8339664	F-03-068861	4207131427		103		RHODA WALKER OIL UNIT #1 WELL #2	RHODA WALKER (CANYON	19.0	UNITED TEXAS TRAN
-FAIRCHILD PETROLEUM CORP				103		W C TYRRELL TRUST #41	ANAHUAC	30.0	HOUSTON PIPELINE
8339520	F-7B-066759	4208332897		RECEIVED:	06/03/83	JA: TX			
8339519	F-7B-066755	4215136615		102-4		J B HAMON #1	DELTA (PALO PINTO)	137.0	EL PASO HYDROCARB
-FISHOP ENERGY CO				102-4		JONISUE STIFF #1	STIFF (CANYON LIME)	819.0	R L FOREE
8339470	F-7B-64264	4242932590		RECEIVED:	06/03/83	JA: TX			
-FLORIDA GAS EXPLORATION COMPANY				103		HAGAMAN-JENNINGS #1	STEPHENS COUNTY REGUL	29.0	LONE STAR GAS CO
8339439	F-7C-54197	4241331248		RECEIVED:	06/03/83	JA: TX			
-FOREST OIL CORPORATION				103	107-TF	FLORENCE 23-84	PHYLLIS SONORA	0.0	INTRATEX GAS CO
8339627	F-8A-068005	4211531779		RECEIVED:	06/03/83	JA: TX			
-FORT WORTH OIL & GAS CO INC				102-4		BARTLETT #1	DEROEN (MISSISSIPPIAN	25.9	TEXACO INC
8339445	F-04-60199	4240931560		RECEIVED:	06/03/83	JA: TX			
-FORTUNE PRODUCTION CO				102-4	103	PORTLAND GAS UNIT D #2	PORTLAND SOUTH (F-13)	365.0	HOUSTON PIPE LINE
8339574	F-7C-67752	4223532860		RECEIVED:	06/03/83	JA: TX			
-GENESIS PETROLEUM CORP				103		MURPHEY "3" #1	CAL (CANYON)	36.5	FARMLAND INDUSTRI
8339529	F-04-066991	4213136186		RECEIVED:	06/03/83	JA: TX			
8339530	F-04-066992	4213136186		102-4		HINOJOSA "B" #1-C (UNASSIGNED)	STARR BRITE W (5680')	298.0	HOUSTON PIPE LINE
-GEORGE HARRISON OIL PROPERTIES INC				102-4		HINOJOSA "B" #1-T (UNASSIGNED)	STARR BRITE W (5858')	185.0	HOUSTON PIPE LINE
8339558	F-09-67513	4250300000		RECEIVED:	06/03/83	JA: TX			
-GEORGE L ROUSSEAU				108		MAHANEY #6	YOUNG COUNTY REGULAR	17.3	LONE STAR GAS CO
8339491	F-03-65804	4205132400		RECEIVED:	06/03/83	JA: TX			
-GETTY OIL COMPANY				102-4		FRED OWENS #2-A	HOOKER CREEK (NAVARRO	36.0	FERGUSON CROSSING
8339621	F-8A-067980	4250100000		RECEIVED:	06/03/83	JA: TX			
8339607	F-06-067944	4236500000		103		BRAHANEY UNIT #117	BRAHANEY	2.5	SHELL OIL CO
8339571	F-8A-67682	4221900000		108		LAGRONE - ALEXANDER #1 (00116)	CARTHAGE	1.0	TEXAS GAS TRANSMI
8339512	F-03-066686	4205100000		103		SYLVESTER #4	LEVELLAND	10.0	AMOCO PIPELINE CO
-GHR ENERGY CORP				102-2		W H GIESENSCHLAG #2 RRC ID #13625	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8339521	F-04-066771	4250531619		RECEIVED:	06/03/83	JA: TX			
-GOLDKING PRODUCTION COMPANY				102-4	107-TF	LA PERLA #44	LA PERLA RANCH (LOBO	456.0	NATURAL GAS PIPEL
8339489	F-04-65684	4235500000		RECEIVED:	06/03/83	JA: TX			
-GOLDSTON OIL CORP				102-4		LAGRONE #1	WILDCAT (PROPOSED - D	214.0	HOUSTON PIPE LINE
8339669	F-03-068083	4216730893		RECEIVED:	06/03/83	JA: TX			
-GORDON OIL CO INC				103		KERL SISTERS UNIT #1	ALTA LOMA NORTH (TACO	72.0	
8339446	F-09-060506	4218100000		RECEIVED:	06/03/83	JA: TX			
-GRACE PETROLEUM CORPORATION				108-ER		M J TURNER #1	SHERMAN	0.0	LONE STAR GAS CO
8339560	F-05-67567	4229330645		RECEIVED:	06/03/83	JA: TX			
-GULF OIL CORPORATION				103	107-TF	DOUGLAS #1	PERSONVILLE NORTH (C-	0.0	TEXAS UTILITIES F
8339488	F-08-65646	4247532151		RECEIVED:	06/03/83	JA: TX			
8339557	F-08-67495	4210332838		103		HUTCHINGS STOCK ASSN #1109	WILDCAT - UNDESIGNATE	10.0	CABOT CORP
				103		J B TUBB "B" #53	SAND HILLS (JUDKINS)	18.4	VALERO TRANSMISSI

JD NO	JA DKT	API NO
8339573	F-04-67714	4250531517
8339636	F-08-068029	4237134171
-H-M OIL CO & PHE (TX) INC		
8339675	F-04-068106	4213136131
-HILL INTERNATIONAL PRODUCTION CO		
8339436	F-06-53767	4240131420
-HILL PRODUCTION CO-WISCONSIN		
8339522	F-03-066825	4233930540
-HILLIARD OIL & GAS INC		
8339663	F-06-63573	4206730372
-HNG OIL COMPANY		
8339680	F-7C-65266	4243500000
8339675	F-7C-65057	4243500000
8339674	F-7C-65056	4243500000
-HORN J R		
8339440	F-09-55014	4250335994
-HUNT OIL COMPANY		
8339641	F-7B-068033	4208333429
8339511	F-09-066393	4218100000
-INDIAN WELLS OIL CO		
8339533	F-7C-066996	4223531660
8339531	F-7C-066994	4223531694
8339532	F-7C-066995	4223531695
-J A LEONARD		
8339626	F-03-067999	4205100000
8339624	F-03-067997	4205100000
8339625	F-03-067998	4205100000
8339623	F-03-067996	4205100000
-JOE B BARRETT		
8339536	F-7B-067192	4204900000
-JOHN L COX		
8339465	F-7C-63638	4238300000
-JONES CO		
8339564	F-7B-67638	4241734641
-KAISER-FRANCIS OIL COMPANY		
8339565	F-08-67639	4222700008
-KETAL OIL PRODUCING CO		
8339442	F-7B-57532	4244733160
-KIRBY EXPLORATION CO		
8339451	F-03-62138	4270430204
8339450	F-03-62137	4204100000
8339449	F-03-62136	4204100000
-L & M OIL CO		
8339494	F-09-65868	4223734679
-L M YOUNG		
8339599	F-7B-067932	4204933113
-LANDMARK EXPLORATION INC		
8339484	F-03-65605	4205100000
-LLOYD PATTON		
8339667	F-7B-068076	4233300500
-LORDSTONE CORP		
8339549	F-01-67349	4217700000
-LYNBROOK OIL CO		
8339462	F-03-63556	4208931325
-LYONS PETROLEUM INC		
8339585	F-03-067876	4206130857
-MAPCO PRODUCTION COMPANY		
8339559	F-10-67539	4223300000
-MARATHON OIL COMPANY		
8339645	F-7C-068040	4210500000
8339644	F-7C-068039	4210500000
8339642	F-7C-068037	4210500000
8339643	F-7C-068038	4210500000
-MID-AMERICA PETROLEUM INC		
8339635	F-7C-068027	4238332182
8339640	F-7C-068031	4238332281
8339637	F-7C-068028	4238332163
8339638	F-7C-068029	4238332251
8339639	F-7C-068030	4238332254
-MIDSTATES OIL CO		
8339663	F-7C-068058	4239932577
-MILES PRODUCTION CO		
8339676	F-09-068111	4223734813
8339563	F-09-67636	4223700000
-MINERAL DEVELOPMENT INC		
8339501	F-08-065979	4237134038
-MITCHELL ENERGY CORPORATION		
8339477	F-09-65154	4249700000
8339633	F-09-067771	4249700000
8339622	F-09-067989	4249700000
8339567	F-09-67667	4249732527
-MODERN DRILLING INC		
8339458	F-01-63340	4217731346
-MONSANTO COMPANY		
8339426	F-10-002235	4221100000
-MORROW RESOURCES INC		
8339472	F-7C-64620	4245131124
-NECESSITY WELL SERVICE		
8339598	F-7B-067931	4242900000
-PALMER PETROLEUM INC		
8339460	F-06-63399	4240100000
-PARKER & PARSLEY INC		
8339482	F-08-65381	4231700000
8339576	F-08-67782	4231700000
-PEARSON-SIBERT OIL CO OF TEXAS		
8339575	F-7C-67760	4208131155
-PENNZOIL PRODUCING COMPANY		
8339643	F-04-058879	4221500000
8339587	F-06-066292	4236531539
-PETREX OPERATING CO INC		
8339685	F-04-65606	4224900000
-PETRO-LEWIS CORPORATION		
8339428	F-08-16382	4210332054
-PETROLEUM MANAGEMENT INC		

D	SEC(1)	SEC(2)	WELL NAME
	103	107-TF	R VIDAURRI NO 19
	103		STATE "BC"-"BI" UNIT #1
	RECEIVED:	06/03/83	JA: TX
	102-4	103	HOMERO L SAENZ GAS UNIT #1 #103957
	RECEIVED:	06/03/83	JA: TX
	102-4	107-TF	KINNEY-LINDSTROM FOUNDATION #2L
	RECEIVED:	06/03/83	JA: TX
	103		R REYNOLDS-BUTLER #1
	RECEIVED:	06/03/83	JA: TX
	103	107-TF	HASKELL YOUNG "C" #1
	RECEIVED:	06/03/83	JA: TX
	103	107-TF	PFLUGER "105" #6
	103	107-TF	PFLUGER "84" #5
	103	107-TF	PFLUGER "85" #5
	RECEIVED:	06/03/83	JA: TX
	102-4		GOLDSTON "B"
	RECEIVED:	06/03/83	JA: TX
	103		A R NEFF #5
	102-4		JOHN MCCULLOUGH #2
	RECEIVED:	06/03/83	JA: TX
	102-2		HARRIS 60-1
	102-2		HARRIS 60-2
	102-2		HARRIS 61-2
	RECEIVED:	06/03/83	JA: TX
	102-4		COFFIELD-SMITH "E" #2
	102-4		COFFIELD-SMITH "F" #3
	102-4		COFFIELD-SMITH "F" #4
	102-4		COFFIELD-SMITH "F" #5
	RECEIVED:	06/03/83	JA: TX
	102-4		R G CHAMBERS #4
	RECEIVED:	06/03/83	JA: TX
	103		ALDWELL "E" #1
	RECEIVED:	06/03/83	JA: TX
	103		WOOLFOLK #1 101179
	RECEIVED:	06/03/83	JA: TX
	102-4	103	R L WALKER #1
	RECEIVED:	06/03/83	JA: TX
	103		CONDRON #2
	RECEIVED:	06/03/83	JA: TX
	102-4		STATE 68903 340-L NW/4 #3-U & 3-L
	102-4		STATE 68903 340-L NW/4 #3-U & 3-L
	102-4		STATE 68903 340-L NW/4 #4
	RECEIVED:	06/03/83	JA: TX
	102-4	103	CAMPBELL #2
	RECEIVED:	06/03/83	JA: TX
	103		ANCIL HALL #1 (102972)
	RECEIVED:	06/03/83	JA: TX
	102-3		ANTONE SCHRADER #1
	RECEIVED:	06/03/83	JA: TX
	102-4		MODENA L BOGGUS #1
	RECEIVED:	06/03/83	JA: TX
	102-4		HILGERS #1
	RECEIVED:	06/03/83	JA: TX
	103		MCLANE TRUST-COYLE #1
	RECEIVED:	06/03/83	JA: TX
	102-2	103	SHARON SMITH UNIT #1
	RECEIVED:	06/03/83	JA: TX
	108		JON A #1
	RECEIVED:	06/03/83	JA: TX
	108		UNIVERSITY "I" #2
	108		UNIVERSITY "X" #3
	108		UNIVERSITY "Z" #2
	108		UNIVERSITY Y #2
	RECEIVED:	06/03/83	JA: TX
	103		MITCHELL #1
	103		SHAW #4
	103		TALLEY "A" #6
	103		TALLEY "A" #7
	103		TALLEY "B" #6
	RECEIVED:	06/03/83	JA: TX
	102-4		ELKINS #1
	RECEIVED:	06/03/83	JA: TX
	102-4		M P HOEFLE "J" #1 ID823106
	108		WM KILLEN #1 ID #34235
	RECEIVED:	06/03/83	JA: TX
	103		MAGNOLIA TRIPOLEY #19
	RECEIVED:	06/03/83	JA: TX
	108		C R BRIDGES #2 #028575
	108-ER		CORA TAYLOR #3
	108		GRACE JO BOEDECKER #1 21524
	103		OLIVER BOND #2
	RECEIVED:	06/03/83	JA: TX
	102-2		CARL SAMPLE UNIT #3
	RECEIVED:	06/03/83	JA: TX
	108-ER		HODGSON #1 RRC #55579
	RECEIVED:	06/03/83	JA: TX
	102-2	103	ZONNE "B" #2
	RECEIVED:	06/03/83	JA: TX
	103		ROY L HARRIS #1 (056985)
	RECEIVED:	06/03/83	JA: TX
	102-2	107-TF	TORKELSON #1
	RECEIVED:	06/03/83	JA: TX
	103		GLASS "B" #1
	103		GLASS "C" #1
	RECEIVED:	06/03/83	JA: TX
	103		FRANK PEARSON REEF UNIT #315
	RECEIVED:	06/03/83	JA: TX
	108-ER		SWALLOW #1
	103	107-TF	WALLACE UNIT #1
	RECEIVED:	06/03/83	JA: TX
	102-4		GEORGE GAINES #1
	RECEIVED:	06/03/83	JA: TX
	103		J B TUBB STATE #11
	RECEIVED:	06/03/83	JA: TX

FIELD NAME	PROD	PURCHASER
DYE (WILCOX 8200)	548.0	TENNESSEE GAS PIP
TROPORO NORTH (QUEEN)	0.0	NORTHERN GAS PROD
ASOG (7500 YEGUA)	0.0	
(TRAVIS PEAK)	0.0	UNITED GAS PIPE L
LAKE CREEK "G"	547.0	TEJAS-SOUTHWESTER
KILDARE (COTTON VALLE	0.0	TEXAS EASTERN TRA
SAWYER (CANYON)	200.0	INTRATEX GAS CO
SAWYER (CANYON)	180.0	INTRATEX GAS CO
SAWYER (CANYON)	150.0	INTRATEX GAS CO
GRAHAM NORTH	547.5	PYRON EXPLORATION
GAYLE	86.0	SOUTHWESTERN GAS
SHERMAN (LOWER PENN)	130.0	CHEVRON U S A INC
PROBANDT (CANYON)	0.0	NORTHERN NATURAL
PROBANDT (CANYON)	0.0	NORTHERN NATURAL
PROBANDT (CANYON)	0.0	NORTHERN NATURAL
INEZ JAMESON (NAVARRO	65.0	FERGUSON CROSSING
INEZ JAMESON (NAVARRO	51.0	FERGUSON CROSSING
INEZ JAMESON (NAVARRO	83.0	FERGUSON CROSSING
INEZ JAMESON (NAVARRO	46.0	FERGUSON CROSSING
BERKELEY (CROSS PLAIN	25.0	EL PASO HYDROCARB
SPRABERRY (TA)	1.0	EL PASO NATURAL G
MUGGINSVILLE (MARBLE	200.0	DELHI GAS PIPELIN
MOORE (DEEP FUSSELMAN	118.6	EL PASO HYDROCARB
BROWN RANCH (CADDO)	18.3	
BLOCK 340	1200.0	FLORIDA GAS TRANS
BLOCK 340 (4700' SD)	0.0	FLORIDA GAS TRANS
BLOCK 340 (BASE AMPH)	810.0	FLORIDA GAS TRANS
NEW YEARS EVE (CONGLO	180.0	LONE STAR GAS CO
BROWN COUNTY REGULAR	2.0	EL PASO HYDROCARB
GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
GORDON SE (CONGLOMERA	365.0	LONE STAR GAS CO
CHRISTIAN	35.0	SUNBURST ENERGIES
EATON MIOCENE (2100')	72.0	HGI CORP
BRYAN (WOODBINE)	128.0	FERGUSON BRAZOS C
WEST PANHANDLE	10.4	COLORADO INTERSTA
FARMER (SAN ANDRES)	4.0	BIG LAKE GAS CORP
FARMER (SAN ANDRES)	7.0	BIG LAKE GAS CORP
FARMER (SAN ANDRES)	3.0	BIG LAKE GAS CORP
FARMER (SAN ANDRES)	7.0	BIG LAKE GAS CORP
SPRABERRY (TREND AREA	13.0	NORTHERN NATURAL
SPRABERRY (TREND AREA	7.5	NORTHERN NATURAL
SPRABERRY (TREND AREA	7.5	NORTHERN NATURAL
SPRABERRY (TREND AREA	7.4	NORTHERN NATURAL
SPRABERRY (TREND AREA	8.0	NORTHERN NATURAL
BEDDO (GARDNER)	0.0	LONE STAR GAS CO
ANTELOPE S E (CADDO)	15.0	SOUTHWESTERN GAS
POST OAK (CONGL)	20.0	LONE STAR GAS CO
PECOS VALLEY HIGH GRA	0.0	PERRY PIPELINE CO
BOONSVILLE (BEND CONG	0.0	NATURAL GAS PIPEL
BOONSVILLE	0.0	NATURAL GAS PIPEL
PARK SPRINGS (CONGL)	0.0	NATURAL GAS PIPEL
ALVORD SOUTH (ATOKA)	11.4	NATURAL GAS PIPEL
COST (AUSTIN CHALK)	0.0	TIPPERARY GATHERI
FELDMAN (CHEROKEE)	13.5	TRANSWESTERN PIPE
K W B (STRAWN)	0.0	LONE STAR GAS CO
STEPHENS COUNTY REGUL	20.0	WARREN PETROLEUM
HENDERSON NORTH (COTT	650.0	UNITED GAS PIPELI
SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
SPRABERRY (TREND AREA	0.0	ADOBE OIL & GAS C
FRANK PEARSON (STRAWN	14.3	SUN EXPLORATION &
EAST EDINBURG	0.8	TRUNKLINE GAS CO
BETHANY EAST/COTTON V	250.0	UNITED GAS PIPE L
WEST REYNOLDS	1186.3	NUE-WELLS PIPELIN
SAND HILLS (MCKNIGHT)	24.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8339496	F-84-865946	4248936706		102-4		YTURRIA CATTLE CO #11
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	06/03/83	JA: TX
8339671	F-88-868088	4213503117		108		GOLDSMITH-ANDECTOR UNIT 8L-08
-PITTS OIL CO & DALLAS PROD INC				RECEIVED:	06/03/83	JA: TX
8339647	F-85-61595	4228930532		102-4		IRWIN "A" #1
-PYRON EXPLORATION & DRILLING CORP				RECEIVED:	06/03/83	JA: TX
8339609	F-09-067953	4250336729		102-2		BLOUNT #2A
-R A W ENERGY CORP				RECEIVED:	06/03/83	JA: TX
8339479	F-7B-65263	4236732415		102-4		CRAVER #1
8339493	F-7C-65834	4239932403		102-4		HUDDLESTON #1
8339492	F-7B-65832	4236732423		102-4		WILEY A B-81
-RAM PETROLEUM CORP				RECEIVED:	06/03/83	JA: TX
8339562	F-88-67608	4237100000		103		KRAMER #5
-RICHEY & CO INC				RECEIVED:	06/03/83	JA: TX
8339461	F-09-63502	4249732685		103		C WAGGONER #1
-SABER PETROLEUM CORP				RECEIVED:	06/03/83	JA: TX
8339444	F-85-68009	4248132118		102-4		L R SUBLETT #1
-SANDEFER PETROLEUM CO				RECEIVED:	06/03/83	JA: TX
8339485	F-82-65602	4229732706		102-4		J R LYNE #2
-SCANDRILL INC				RECEIVED:	06/03/83	JA: TX
8339586	F-10-866219	4248338988		102-4		PORTER #1
-SESCO PRODUCTION CO				RECEIVED:	06/03/83	JA: TX
8339430	F-86-35804	4240100000		103		DAVIS ALLEN #2
-SO-TEX PETROLEUM, INC.				RECEIVED:	06/03/83	JA: TX
8339670	F-7B-868085	4244132316		102-4		HORTH CORNETT #5
-SONIO PETROLEUM CO				RECEIVED:	06/03/83	JA: TX
8339620	F-88-867976	4217331395		103		SPRABERRY DRIVER UNIT 8881
-SOJOURNER DRILLING CORP				RECEIVED:	06/03/83	JA: TX
8339589	F-7B-866335	4225300000		102-4		IRENE WILLIAMS #2 (16336)
8339518	F-7B-866358	4215130947		103		WAGSTAFF-ESTES #1 (092547)
-SOL ENERGY INC				RECEIVED:	06/03/83	JA: TX
8339478	F-84-65250	4213100000		102-4		LILIA GARCIA #2
-SOUTHERN CRUDE OIL RESOURCES INC				RECEIVED:	06/03/83	JA: TX
8339464	F-7B-63584	4236332949		102-4		PARKER #1
-SOUTHLAND ROYALTY CO				RECEIVED:	06/03/83	JA: TX
8339608	F-8A-867951	4216532507		103		FOSTER #15
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	06/03/83	JA: TX
8339513	F-84-866717	4242700000		108		AGUSTIN OLIVARES #8
8339525	F-84-866932	4242700000		108		AMANDA MCKINNEY #25
8339432	F-89-861749	4249700000		108-ER		DORA MORRIS UNIT #2
8339438	F-84-53988	4233531932		102-4		F E LONDON #7L
8339457	F-84-53826	4235531932		102-4		F E LONDON #7U
8339540	F-84-67234	4242700000		108		GARZA-RIVAS UNIT #1-1T
8339537	F-84-867228	4242700000		108		GARZA-RIVAS UNIT #1-2
8339434	F-84-868811	4242700000		108-ER		GEORGE H SPEER STATE B #18
8339459	F-88-63389	4200300000		108		HOLT O B GRBG #3-4
8339559	F-88-67467	4243131223		103		I L ELLWOOD #5
8339604	F-82-867940	4239100000		108		J M O'BRIEN NO 4-4D
8339550	F-7B-67360	4240933502		103		J M WARD "C" NO 134
8339602	F-88-67937	4230100000		108		MOORE-HOOPER -A- #1
8339554	F-88-67486	4200333330		103		NELLIE C MARTIN #13
8339605	F-88-867941	4200300000		108		O B HOLT GRBG #2-8
8339603	F-88-867939	4200300000		108		O B HOLT-PENN #4-6
8339551	F-88-67365	4213534082		103		PAUL MOSS #195
8339495	F-86-865928	4222530442		103		R S DAILEY #10
8339539	F-84-67232	4224900000		108		SEELIGSON UNIT #1-31C
8339538	F-84-867231	4224900000		108		SEELIGSON UNIT #14-8T
8339553	F-83-62658	4229131551		103		SUN FEE LOT 45 #1
8339514	F-82-866718	4225931550		103		T J HUDGINS #4
8339610	F-7C-867954	4210534184		103		UNIVERSITY "D" #12
8339600	F-7C-867935	4210534185		103		UNIVERSITY "D" #13
8339556	F-88-67488	4233532307		103		W T MCCABE D-E UNIT #1
8339601	F-83-867936	4203930823		103		WISCH SAINT #6
-SUPERIOR OIL CO				RECEIVED:	06/03/83	JA: TX
8339468	F-83-63790	4228731328		102-2	103	L W SMITH #1
8339471	F-83-64371	4214931425		102-2	103	STERNADL K B #2
8339606	F-88-867942	4237134104		102-4	103	UNIVERSITY "19-1" #1
8339469	F-82-64138	4228531681		103	107-TF	W SMITH GAS UNIT #1
-TAMARACK PETROLEUM CO INC				RECEIVED:	06/03/83	JA: TX
8339674	F-7C-868101	4246131619		103		EXXON-COWDEN "B" #1 (RRC #08702)
8339673	F-7C-868100	4246131765		103		EXXON-COWDEN "B" #2 (RRC #08702)
8339672	F-7C-868099	4246131682		103		EXXON-COWDEN "C" #1 (RRC #09070)
-TEE OPERATING CO				RECEIVED:	06/03/83	JA: TX
8339431	F-85-36909	4228930415		103		PULLEN #1-L
-TEXACO INC				RECEIVED:	06/03/83	JA: TX
8339454	F-88-62715	4232931089		103		C SCHARBAUER "D" #8
-TEXAS R O I INC				RECEIVED:	06/03/83	JA: TX
8339476	F-84-65116	4224900000		102-4		BALDESCHWILER #1
-TEXCAN RESOURCES CORP				RECEIVED:	06/03/83	JA: TX
8339552	F-7C-67374	4239932672		103		MCCORD B-7
-TOM BROWN INC				RECEIVED:	06/03/83	JA: TX
8339499	F-7C-865972	4243532868		103	107-TF	HILL-EDWIN S MAYER JR "O" #1
8339498	F-7C-865970	4243532862		103	107-TF	HILL-EDWIN S MAYER JR "R" #1
8339500	F-7C-865973	4243532860		103	107-TF	HILL-EDWIN S MAYER JR "S" #1
8339496	F-7C-65607	4243532854		103	107-TF	HILL-WINNIE R ALDWELL TRUST "G" #1
8339502	F-7C-865989	4238332339		103		O N LANE "A" #1
-TUCKER DRILLING COMPANY INC				RECEIVED:	06/03/83	JA: TX
8339542	F-7C-67316	4243500000		108		COLLIER SHURLEY #4
-UNION SEABOARD CORP				RECEIVED:	06/03/83	JA: TX
8339523	F-88-866850	4237133821		103		UNIVERSITY "165" #4
-USEMCO INC				RECEIVED:	06/03/83	JA: TX
8339668	F-7B-868078	4236732416		103		WHITE #2 RRC #104300
-WAGNER & BROWN				RECEIVED:	06/03/83	JA: TX
8339596	F-88-867926	4243131267		103		RAY "A" #10-31
8339597	F-88-867927	4243131261		103		RAY "A" #13-30
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	06/03/83	JA: TX
8339579	F-88-67888	4210305710		108		E M SHODGRASS #22
8339578	F-88-67887	4210300314		108		STATE "ED" #6
8339662	F-88-868057	4210330410		108		W N WADDELL #1013
8339661	F-88-868056	4210330415		108		W N WADDELL #1014
8339660	F-88-868055	4210330416		108		W N WADDELL #1015
8339659	F-88-868054	4210330430		108		W N WADDELL #1017
8339658	F-88-868053	4210330464		108		W N WADDELL #1037
8339657	F-88-868052	4210330476		108		W N WADDELL #1042
8339656	F-88-868051	4210330562		108		W N WADDELL #1059
8339655	F-88-868050	4210302306		108		W N WADDELL #11
8339503	F-88-866038	4210332284		108-ER		W N WADDELL #1167
8339654	F-88-868049	4210305911		108		W N WADDELL #179
8339653	F-88-868048	4210305914		108		W N WADDELL #5
8339652	F-88-868047	4210302028		108		W N WADDELL #578
8339651	F-88-868046	4210302156		108		W N WADDELL #707
8339650	F-88-868045	4210302160		108		W N WADDELL #711
8339649	F-88-868044	4210302234		108		W N WADDELL #787
8339648	F-88-868043	4210302261		108		W N WADDELL #814
8339647	F-88-868042	4210302642		108		W N WADDELL #824
8339427	F-88-811059	4210310998		108-ER		W N WADDELL #963
8339646	F-88-868041	4210330362		108		W N WADDELL #994
-WCS PETROLEUM CO				RECEIVED:	06/03/83	JA: TX
8339527	F-83-866953	4228731332		103		WITTE UNIT #1

FIELD NAME	PROD	PURCHASER
LACAL (1-1)	180.0	
GOLDSMITH (CLEARFORK)	23.0	EL PASO NATURAL G
EUNICE (TRAVIS PEAK)	350.0	EASTEX GAS TRANSM
GRAHAM NORTH MARBLE F	56.0	MID-STATE GAS COR
DICEY S (STRAWN)	250.0	LIQUID ENERGY COR
BEDDO (GRAY 3920)	200.0	LONE STAR GAS CO
DICEY N (BIG SALINE C	200.0	TEXAS UTILITIES F
TCI-WADDELL	0.0	INTRATEX GAS CO
BOONSVILLE (BEND CONG	350.0	NATURAL GAS PIPEL
HILLJE (7030')	100.0	VALERO TRANSMISSI
TEXAM (9380' WILCOX)	0.0	HOUSTON PIPE LINE
PORTER VIOLA	0.0	
JARELL CREEK (TRAVIS	0.0	TEXAS UTILITIES F
SO-TEX (CAPPS LIME)	350.0	UNION TEXAS PETRO
SPRABERRY (TREND AREA	30.0	EL PASO NATURAL G
JAY (NOODLE CREEK)	1.0	PALO DURO PIPELIN
RAVEN CREEK (STRAWN)	22.0	PALO DURO PIPELIN
SEJITA EAST (1300' UP	47.0	
TOMERLIN (CONGL)	0.0	SOUTHWESTERN GAS
D E B	20.0	PHILLIPS PETROLEU
SUN (F-2-A)	0.0	TRANSCONTINENTAL
SUN (F-1-U)	0.0	TRANSCONTINENTAL
BOONSVILLE	0.0	NATURAL GAS PIPEL
DOUGHTY W	42.0	HOUSTON PIPELINE
DOUGHTY W	0.0	HOUSTON PIPELINE
RINCON NORTH (STRAY 4	7.0	
RINCON NORTH (4100)	11.0	
SUN	0.0	
COWDEN NORTH	8.5	AMOCO PRODUCTION
ROSE CREEK (WOLFCAMP	8.7	
GRETA (700)	12.0	UNITED TEXAS TRAN
STEPHENS COUNTY REGUL	4.0	PETROLEUM CORP OF
MOORE-HOOPER (ATOKA)	14.0	VALERO INTERSTATE
MARTIN WEST (FUSSELMA	12.0	PHILLIPS PETROLEU
COWDEN NORTH	1.0	AMOCO PRODUCTION
TRIPLE -N- (PENN UPPE	2.0	AMOCO PRODUCTION
COWDEN SOUTH (CANYON	21.0	EL PASO HYDROCARB
NAVARRO CROSSING (ROD	90.0	LONE STAR GAS CO
SEELIGSON (ZONE 19B-0	15.0	TENNESSEE GAS PIP
SEELIGSON (ZONE 20 A-	11.0	TENNESSEE GAS PIP
SOUTH LIBERTY	48.0	
SANDY CREEK	8.0	LONE STAR GAS CO
FARMER (SAN ANDRES)	4.0	J L DAVIS
FARMER (SAN ANDRES)	1.0	J L DAVIS
JAMESON N (STRAWN)	11.0	LONE STAR GAS CO
PLEDGER (FRIO 7630)	12.0	UNITED TEXAS TRAN
GIDDINGS (AUSTIN CHAL	0.0	
GIDDINGS (AUSTIN CHAL	0.0	
TUNIS CREEK (DEVONIAN	186.6	
WORD (EDWARDS)	0.0	
SPRABERRY (TREND AREA	18.0	EL PASO NATURAL G
SPRABERRY (TREND AREA	17.0	EL PASO NATURAL G
SPRABERRY (TREND AREA	12.0	EL PASO NATURAL G
JEWETT (TRAVIS PEAK)	0.0	LONE STAR GAS CO
WILDCAT	0.0	
WADE CITY (3500)	90.0	UNITED GAS PIPE L
BERNARD (GARDNER LOWE	36.5	LONE STAR GAS CO
SAWYER (CANYON)	73.0	LONE STAR GAS CO
SAWYER (CANYON)	73.0	LONE STAR GAS CO
SAWYER (CANYON)	73.0	LONE STAR GAS CO
ALDWELL RANCH (CANYON	73.0	LONE STAR GAS CO
CALVIN (DEAN)	22.0	UNION TEXAS PETRO
SAWYER (CANYON)	15.0	EL PASO NATURAL G
LEON VALLEY E (TANSIL	54.7	
POOLVILLE SW (CONGL 4	125.0	LONE STAR GAS CO
CONGER (PENN)	349.8	TEXAS UTILITIES F
CONGER (PENN)	163.3	TEXAS UTILITIES F
WADDELL	8.8	EL PASO NATURAL G
DUNE	0.1	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	9.9	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	2.7	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	0.8	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	0.8	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	3.6	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	2.7	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	4.3	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	0.2	EL PASO NATURAL G
SAND HILLS (JUDKINS)	107.0	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	2.2	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	9.8	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	3.5	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	2.9	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	15.3	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	4.4	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	2.6	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	10.2	EL PASO NATURAL G
BLOCK B-21 (TUBB)	100.0	EL PASO NATURAL G
SAND HILLS (MCKNIGHT)	1.4	EL PASO NATURAL G
GIDDINGS (AUSTIN CHAL	0.0	PERRY PIPELINE CO

[FR Doc. 83-17028 Filed 6-23-83; 8:45 am]

BILLING CODE 6717-01-C

federal register

Friday
June 24, 1983

Part XXXII

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Reduction in Error Rate Tolerance; Medicaid Quality Control Program; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

Medicaid Program; Reduction in Error Rate Tolerance; Medicaid Quality Control Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim Final Rule With Comment Period.

SUMMARY: This interim final rule implements the provisions of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). These regulations provide for disallowance of Federal financial participation to States whose eligibility payment error rate for Medicaid, as measured by the Medicaid quality control system, exceeds 3 percent for the period April 1 through September 30, 1983, and for each fiscal year thereafter.

The regulations further provide for HCFA to project a payment error rate for each State and to reduce the State's quarterly estimate of expenditures if the anticipated error rate exceeds the 3-percent national standard.

DATES: Effective Date: April 1, 1983. Although these regulations are effective on an interim basis, comments may be submitted as describe below. Comment Date: To assure consideration, comments must be mailed by August 23, 1983.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BQC-19-FC, P.O. Box 17076, Baltimore, Maryland 21235. In commenting, please refer to file code BQC–19–FC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Secruity Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Randolph Graydon, (301) 597–1308.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid quality control (MQC) system was designed to reduce erroneous expenditures in medical assistance payments by monitoring eligibility determinations, third-party liability activities, and claims processing. The system uses 6-month sampling periods from April–September, and October–March.

Within each 6-month period, a State must select a sample of cases every month and review them for errors. At the end of each 6-month review period, a State's payment error rate is calculated by HCFA based on the findings submitted by the State. A subsample of the State-selected cases is reviewed by HCFA to verify the State's findings. If a State fails to complete a valid review for any period, HCFA assigns the State an error rate based on either the weighted average of its error rate in the last three review periods, a special Federal sample or audit, or a Federal subsample.

In the absence of specific legislation, a major issue in the history of quality control was the Federal government's authority to limit Federal financial participation (FFP) for erroneous expenditures, particularly in instances where the level of erroneous expenditures exceeds prescribed tolerance levels. In 1973, the Department issued regulations setting tolerance levels for erroneous expenditures for Aid to Families with Dependent Children (AFDC) at 3 percent for ineligibles and 5 percent for overpayments. In 1976, the U.S. District Court for the District of Columbia ruled in *Maryland v. Mathews*, 415 F. Supp. 1206 (D.D.C. 1976) that while the Department had the authority to withhold FFP "in a specified amount set by a tolerance level," the 3- and 5-percent tolerance levels were "arbitrary and capricious."

As a result of the court's decision, the Department consulted with State and local governments and other affected parties and reevaluated quality control tolerance levels. A notice of proposed rulemaking (NPRM) was published on July 7, 1978, setting the tolerance level at the national average of all State error rates for a base period. All States whose error rate exceeded the national average were required to reduce their error rates to the national average or by 15.7 percent for each 6-month period. The 15.7 percent figure was the average rate of reduction in eligibility errors achieved by all States in the AFDC program during the 27 months after the AFDC quality control system was established in April 1973. If those reductions were not accomplished, the State was subject to disallowances of FFP. Those regulations became final on March 7, 1979, and included error rate standards for Medicaid for the first time.

In the course of deliberations on the Fiscal Year 1980 Labor-HEW Appropriation bill (Pub. L. 96–123), the House-Senate conferees reviewed the March 7, 1979 standards and directed the Secretary to issue new regulations requiring that all States reduce their AFDC and Medicaid eligibility payment error rates to 4 percent by September 30, 1982.

The conferees further specified the following:

- There should be a phased reduction from the July–December 1978 base period payment error rate to the 4-percent target over the fiscal years 1980, 1981, and 1982.
- Failure to meet an error rate target should result in the loss of Federal matching funds associated with erroneous payment expenditures in excess of the target.
- In certain limited cases, the Secretary could waive or reduce the amount of the disallowance if a State made a "good faith effort" but failed to meet its target. These waivers were to be limited to extraordinary circumstances.

These provisions, commonly referred to as the Michel amendment, represented the first congressionally mandated error rate tolerance levels. An NPRM proposing these changes was published on September 25, 1979, and a final rule was published on January 25, 1980, with an effective date of October 1, 1980. In the interim, the Department maintained the 1979 disallowance system.

II. New Legislation

Congress addressed the error rate tolerance level again when considering legislation before the second session of the 97th Congress. HHS proposed that tolerance levels be reduced from 4 percent to 3 percent in FY 83, 2 percent in FY 84, 1 percent in FY 85, and to a zero tolerance thereafter. Congress decided, as a result of their review of various proposals, to set the payment error rate tolerance level at 3 percent, and to require that rate to be achieved in the third and fourth quarters of FY 1983 and in each succeeding fiscal year. Section 133 (Limitation of FFP in erroneous medical assistance expenditures) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), enacted on September 3, 1982, includes this tolerance level.

The Conference Committee Report accompanying Pub. L. 97–248 indicates that "the Medicaid error rate provisions and penalties incorporated in the 1980 Appropriations Act" are deleted and "substitutes language establishing a 3-percent target error rate for quarters beginning after March 30, 1983". (H.R. Rep. No. 97–760, 97th Cong., 2nd Sess. 439 (1982).)

Previously, all quality control disallowances were computed after final payment error rates were established and the States' requests for relief from disallowance assessed. However, in addition to the disallowance calculation, section 133 further requires the Secretary to reduce prospectively each State's quarterly request for FFP for medical assistance by the difference in the 3-percent standard and the State's anticipated payment error rate (section 1903(u)(1)(C) of the Social Security Act). The method for determining this anticipated error rate is left to the discretion of the Secretary.

If a State fails to cooperate in providing information to establish its anticipated or actual error rate, the Secretary is authorized to establish that error rate on the basis of the best data available and "in accordance with such techniques for sampling and estimating as he finds appropriate" (section 1903(u)(3)(A) of the Act). If this authority must be utilized, the Secretary may establish the error rate either directly or through contractual or by any other arrangements as he or she may prescribe. In either case, the State is liable for the cost of establishing the error rate and will have its FFP reduced by the full amount of the cost to the Secretary (section 1903(u)(3)(B) of the Act).

Section 1903(u)(1)(E) of the Act excludes payments as a result of "technical errors" from a state's error rate calculation; however, the definition of technical error is not included in the law. The Conference Committee Report on Pub. L. 97–248 defines technical errors as "errors which if corrected would not have made a difference in the amount of medical assistance paid." (H.R. Rep. No. 97–760, 97th Congress 2d Sess. 439 (1982)). In addition, payments made for services provided to any individual whose eligibility was determined exclusively by the Social Security Administration (SSA) under a section 1634 agreement are excluded, and the Secretary may exclude any other classes of individuals whose eligibility was determined in part under a section 1634 agreement. (Under section 1634 of the Act, a State may enter into an agreement with SSA that allows SSA to determine Medicaid eligibility on behalf of the State for individuals who are eligible for Supplementary Security Income (SSI) or who are receiving a State supplementary payment that is federally administered, or both.)

Since the imposition of disallowance regulations, MQC error rates have steadily declined. In fact, the national average payment error rate has decreased from 6.6 percent for the July–December 1978 base period to a projected rate, after applying the provisions of these regulations, of near 3 percent for the April–September 1981 and October 1981–March 1982 assessment perods (the two latest completed periods). These figures give an encouraging indication that the 3-percent standard set forth in this document is achievable by the States.

III. Provisions of the Regulations

A. Calculation of the Payment Error Rate

As prescribed by the Act, a State's payment error rate will be expressed as a ratio of erroneous payments for medical assistance to total medical assistance expenditures under the State plan.

Erroneous payments are defined in the statute and these regulations as medical assistance payments that were made for an individual or family under quality control review who: (a) Was ineligible for the review month or at the time services were received, or (b) had not properly met beneficiary liability prior to receiving Medicaid services.

Beneficiary liability is either the amount of excess income that must be offset with incurred medical expenses to gain eligibility ("spenddown") or the amount of payment a beneficiary must make toward the cost of long term care.

As directed by the Act, in determining the amount of erroneous payments for cases determined to be ineligible due to excess resources, the lesser of the amount of excess resources or the amount of medical assistance payments for the review month is the amount of the error. This represents a change from previous policy that specified the amount of medical assistance payments for the review month as the error amount.

Similarly, in determining the amount of the error for cases in which there is a beneficiary liability error, the amount of the error is the smaller of the unmet beneficiary liability or the amount of medical assistance payments for the review month.

In addition, these regulations implement the statutory requirement that all payments made on behalf of SSI beneficiaries whose eligibility is determined exclusively by SSA in section 1634 contract States are excluded from the calculation of the payment error rate. These regulations continue the exclusion of all payments made to SSI beneficiaries in section 1634 contract States in the same manner in which they were excluded in previous disallowance regulations.

These payments are excluded because the conditions for agreement for a section 1634 contract require that the State's Medicaid eligibility criteria be identical to those for SSI eligibility as set forth in 20 CFR 416.2111. Therefore, if Medicaid eligibility is determined under a section 1634 agreement, SSA is exclusively determining eligibility and States should not be held at risk for these determinations. If States impose additional eligibility requirements beyond those for SSI, payments to SSI beneficiaries would then become subject to the provisions of these regulations.

Section 1903(u)(1)(E) of the Act excludes payments made as a result of a technical error from the determination of erroneous payments. As mentioned above, Congress indicated that technical errors were those that, if corrected, would not have made a difference in the amount of medical assistance paid. Based on inquiries made to Congressional staff, we believe that the intent of the conferees was to ensure that errors caused solely by failure of the beneficiary or agency to complete all paperwork-type eligibility requirements not be included as errors in these regulations.

We are, therefore, defining technical errors for MGC purposes as errors in conditions of eligibility that, if corrected, would not result in a difference in the amount of medical assistance paid. These errors include, but are not limited to, Work Incentive Program requirements, the assignment of Social Security numbers, the requirement for a separate Medicaid application, and monthly reporting requirements. However, any change in financial circumstances or categorical eligibility will be counted. For example, if a beneficiary fails to make a monthly report that would have revealed additional income, no error will be cited for failure to report, but the additional income will be treated under MQC rules. These errors are included as technical errors because they meet the definition of a paperwork requirement. In addition, we are including in the definition of technical error the assignment of third party benefits as a condition of Medicaid eligibility. The assignment of third party benefits errors are included

because they meet the definition of a paperwork requirement and we want to encourage States to elect this optional eligibility requirement. This definition is included in the regulations.

B. Determining a State's Anticipated Erroneous Payment Rate

Section 1903(u)(1)(c) of the Act requires the Secretary to project an anticipated erroneous payment rate for each State and to reduce the State's quarterly estimate of FFP for medical assistance expenditures by the percentage that the State's error rate exceeds 3 percent. The method used to calculate the anticipated error rate is not included in the statute, but is left to the Secretary to prescribe. We considered a number of options including developing statistical trend lines; however, in the final analysis, we decided to base the projections on the error rates of the two most recently completed 6-month sampling periods. This method was selected after consultation with the State MQC/Corrective Action Technical Advisory Group. The group believed that these latest data were the best on which to base projections for future periods.

In determining the anticipated erroneous medical assistance payment rate, HCFA will evaluate the data from the two 6-month review periods most recently completed by HCFA and the State. Determination of a State's anticipated erroneous payment rate will take into consideration technical errors and the revised method of assigning dollar amounts for resource errors, as well as corrective actions implemented by the State. After the combined error rate for those two review periods has been adjusted for these revisions, the adjusted error rate will become the anticipated error rate for the quarter in question. The data will continue to be adjusted for the resource and technical errors until data produced under these regulations becomes available. However, consideration of implemented corrective action will be ongoing. The anticipated erroneous medical assistance expenditures to be withheld from the State's quarterly estimate of medical assistance expenditures will be based on the difference between the State's anticipated error rate and the 3-percent tolerance level.

C. Establishing an Error Rate for States that Fail to Cooperate

Sections 1903(u)(3) (A) and (B) of the Act provide that if a State fails to cooperate in providing information for establishing its error rate or its anticipated error rate, the Secretary must establish those rates in an appropriate manner. This may be done by the Secretary directly or under a contractual or other arrangement. Regardless of the method used by the Secretary, the full costs associated with determining the error rates must also be withheld from the FFP properly claimed by the State.

In implementing this provision, we decided to closely follow the language in the current disallowance regulations (42 CFR 431.802(c)(3)) for establishing a State's error rate if the State fails to complete a valid review. Therefore, the State's error rate will be based on: (a) A special sample or audit; (b) the Federal subsample; or (c) other such arrangements as the Administrator may prescribe.

D. Computations for Disallowance of FFP

When States request their quarterly advance of FFP, HCFA will reduce the amount of the estimate of FFP for medical assistance expenditures by the percentage difference between the 3-percent tolerance level and the anticipated error rate established by HCFA for that quarter. At the close of the quarter, this reduction will be adjusted to reflect the State's actual expenditures for the quarter. These reductions will be noted on the State's grant award and are not disallowances. Therefore, the quarterly reductions are not appealable.

When the actual error rates for the review period are determined, the final disallowance amount will be computed and adjustments will be made in the FFP to reflect these findings. The final error rates will be either those determined from the State reviews and subsequent Federal re-reviews or, if the State fails to complete a valid sample, those determined by HCFA. The final disallowance amount will be the product of (1) the difference between the 3-percent tolerance level and the State's established adjusted error rate and (2) the amount of the Federal share of medical assistance expenditures for the review period.

E. Notice of Disallowance and Waivers of Disallowance Based on "Good Faith"

Section 1903(u)(1)(B) of the Act permits the Secretary to waive, in certain limited cases, all or part of an FFP disallowance if a State is unable to reach the 3-percent tolerance level despite a good faith effort. HCFA will evaluate requests for waivers at the time of the final disallowance. States will be allowed 30 days from the date of the notice of a potential disallowance to apply for a waiver. HCFA will respond within 60 days of receipt of all information needed to reach a decision on the State's request for a waiver.

We have adopted the criteria of the current regulation (42 CFR 431.802(f)(2)) for evaluating waivers because of the similarity of the wording of the two laws. However, we have added the stipulation that:

- A State must make timely updates to corrective action plans that were designed to meet the target error rate, but did not, in the end, achieve that target error rate; and
- A State must complete quality control reviews as specified in 42 CFR 431.800.

We have added these criteria because we believe that effective corrective action must be based on corrective action plans that reflect the most recently available data and that the States should have met all the requirements of the MQC program to receive a waiver.

The Administrator of HCFA is designated by the Secretary as the authority to disallow FFP under this provision of the Act and to act on waiver requests.

F. Applicability

Guam, Puerto Rico, the Virgin Islands, the Northern Marianas, and American Samoa are excluded from the provisions of these regulations under section 1903(u)(4) of the Act.

G. Disallowances under the Michel Amendment

Under section 133(c) of Pub. L. 97-248, the Medicaid error rate provisions and penalties incorporated in the 1980 Appropriations Act (the Michel amendment) are not effective with respect to payments to States for quarters beginning after September 30, 1982. We have, therefore, included in these regulations a "sunset date" of September 30, 1982 for 42 CFR 431.802. The error rate targets established under the Michel amendment remain in effect for all MQC review periods prior to October 1, 1982.

IV. Impact Analysis

A. Executive Order

The Secretary has determined that these regulations do not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order No. 12291. That is, these regulations will not have an annual effect on the economy of $100 million or otherwise meet the threshold criteria of the Executive Order.

The provisions of this rule will result in withholdings of FFP in the amount of $12 million in FY 1983 and $22 million in

FY 1984. These estimates reflect the product of the difference between the 3-percent national standard and the adjusted error rate, and the amount of the Federal share of the medical assistance expenditures, for those States that we anticipate would exceed the 3-percent level. We will make prospective adjustments to quarterly grant estimates of States that exceed the 3-percent level.

These estimates may vary depending on improvement of State error rates. The estimates are below the $100 million threshold. Further, it is the statutory provisions and not these regulations that will result in the program savings. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b) enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not have a significant economic impact on a substantial number of small entities.

These regulations implement congressionally mandated tolerance levels for erroneous payments in the Medicaid program. The regulations affect only State Medicaid agencies, which do not fall into the category of small governmental jurisdictions as defined by Pub. L. 96-354. However, even if there were a significant effect on a substantial number of small entities, we have determined that this effect is the result of the statutory provisions and not these regulations which merely implement the provisions. Therefore, a regulatory flexibility analysis is not required.

V. Other Required Information

A. Waiver of Proposed Rulemaking

We are publishing these regulations as an interim final rule with comment period without notice of proposed rulemaking procedures. For reasons discussed below, we believe that publishing an NPRM on the error rate tolerance regulations would be contrary to the public interest.

Congress has expressed continuing concern for improving the rate of erroneous eligibility payments in the Medicaid program. This concern was evidenced by the enactment of the Michel amendment (Pub. L. 96-123) and section 133 of Pub. L. 97-248 which these regulations implement. The urgency of Congress' desire for program improvement is demonstrated by the fact that section 133 was effective upon enactment, September 3, 1982, and by the requirement for prospective reductions of a State's quarterly request for medical assistance funds when HCFA projects an error rate exceeding the 3-percent national standard. Failure to have final regulations in place as soon as possible after April 1, 1983, the beginning of the first period for which reductions must be taken, is contrary to public interest.

Although Secretarial discretion is provided in three areas (good faith waivers, definition of technical errors, and exclusion from the error rate of payments made for certain SSI beneficiaries), the statute clearly delineates the major provisions included in these regulations. Two of the three areas of discretion (good faith waivers and the SSI exclusion) have previously been subjected to the NPRM process as provisions of the Michel amendment regulations and are essentially the same in these regulations. In addition, these regulations affect only States and they have been informed of the development of these provisions. These provisions are not materially different from the present qualify control program that has been in effect since 1978.

However, we do not intend to deprive States or any other interested parties of their opportunity to comment on these regulations. Therefore, we are issuing these regulations on an interim final basis and are soliciting public comment. We will consider all public comments we receive on this rule, determine whether changes in these regulations are needed, and publish final regulations by December 30, 1983.

B. Waiver of Delayed Effective Date

We are publishing these regulations with an effective date of April 1, 1983. A delayed effective date of 30 days is waived because we believe delayed implementation of these regulations would be contrary to public interest.

As stated above in section A., Waiver of Proposed Rulemaking, Congress demonstrated the urgency of its desire for program improvement by making section 133 of Pub. L. 97-248 effective upon enactment and requiring implementation during the quarter beginning April 1, 1983.

These regulations effect only State Medicaid agencies and all of these agencies have been informed of our intent to implement the provisions of section 133 for the quarter beginning April 1, 1983. In addition, a technical assistance group comprised of State Medicaid agency personnel have had direct input into the development of this rule.

For these reasons, we believe that failure to make these regulations effective on April 1, 1983, when the first reductions must be taken, is contrary to the public interest.

C. Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider any comments on this rule that are mailed by the date specified in the "DATES" section. If, as a result of public comments, we conclude that changes in these interim final regulations are needed, we will respond to the comments and include these changes in the final regulations described in item A above.

D. List of Subjects in 42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, and Reporting and recordkeeping requirement.

42 CFR Chapter IV is amended as set forth below.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

42 CFR Part 431 is amended as set forth below:

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

1. The table of contents for Part 431, Subpart P is amended by adding § 431.803.

* * * * *

§ 431.803 Disallowance of Federal financial participation for erroneous State payments (effective April 1, 1983)

2. Section 431.800 is amended by revising paragraph (a) to read as follows:

§ 431.800 Medicaid quality control (MQC) system.

(a) *Basis and purpose.*

(1) *Basis.* This subpart implements the following sections of the Act, which establish requirements for State plans and for payment of Federal financial participation (FFP) to States:

1902(a)(4) Administrative methods for proper and efficient operation of the State plan.

1903(u) Limitation of FFP for erroneous medical assistance expenditures.

(2) *Purpose.* This section establishes State plan requirements for a Medicaid quality control system designed to reduce erroneous expenditures by

monitoring eligibility determinations, third-party liability activities, and claims processing.

* * * * *

3. Section 431.802 is amended by revising paragraph (a)(2) to read as follows:

§ 431.802 Disallowance of Federal financial participation for erroneous State payments (effective October 1, 1980 through September 30, 1982.

(a) *Purpose and applicability* * * *

(2) *Applicability.* This section applies to all States for the 12-month annual assessment periods of October 1980–September 1981 and October 1981–September 1982. Beginning April 1, 1983, all States except Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa must follow the rules and procedures specified in § 431.803.

* * * * *

4. Section 431.803 is added to read as follows:

§ 431.803 Disallowance of Federal financial participation for erroneous State payments (effective April 1, 1983).

(a) *Purpose and applicability.*

(1) *Purpose.* This section establishes rules and procedures for disallowing Federal financial participation (FFP) in erroneous medical assistance payments due to eligibility and beneficiary liability errors, as detected through the Medicaid quality control (MQC) system required under § 431.800.

(2) *Applicability.* This section will apply to all States except Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa for the period of April 1983–September 1983 and for each full fiscal year thereafter beginning with the October 1983–September 1984 annual assessment period.

(b) *Definitions.* For purposes of this section—"Administrator" means the Administrator, Health Care Financing Administration or his or her designee.

"Annual assessment period" means the 12-month period October 1 through September 30 and includes two 6-month sample periods (October–March and April–September).

"Beneficiary liability" means—

(1) The amount of excess income that must be offset with incurred medical expenses to gain eligibility; or

(2) The amount of payment a recipient must make toward the cost of long term care.

"Erroneous payments" means the Medicaid payment that was made for an individual or family under review who—

(1) Was ineligible for the review month or at the time services were received; or

(2) Had not properly met beneficiary liability prior to receiving Medicaid services.

"National standard" means a 3-percent eligibility payment error rate.

"State payment error rate" means the ratio of erroneous payments for medical assistance detected under the MQC system for each annual assessment period (or the period April–September 1983) to total expenditures for medical assistance (less payments to Supplemental Security Income beneficiaries in section 1634 contract States) for the same period.

"Technical error" means errors in eligibility conditions that, if corrected, would not result in a difference in the amount of medical assistance paid; that is, Work Incentive Program requirements, assignment of social security numbers, the requirement for a separate Medicaid application, monthly reporting requirements, and assignment of rights to third-party benefits as a condition of eligibility for Medicaid.

(c) *Setting the State's payment error rate.*

(1) A payment error rate for each State is determined by HCFA for the period April–September 1983 and for each annual assessment period thereafter by computing the ratio of erroneous payments for medical assistance to total expenditures for medical assistance for that State under its State plan in effect at the time of review. This ratio incorporates the findings of a federally re-reviewed subsample of the State's review findings.

(2) The State's payment error rate does not include payments made on behalf of individuals whose eligibility determinations were made exclusively by the Social Security Administration under an agreement under section 1634 of the Act.

(3) The amount of erroneous payments is determined as follows:

(i) For ineligible cases resulting from excess resources, the amount of error is the lesser of—

(A) The amount of the payments made on behalf of the family or individual for the review month; or

(B) The difference between the actual amount of countable resources of the family or individual for the review month and the State's applicable resource standard in the approved State plan.

(ii) For ineligible cases resulting from other than excess resources, the amount of error is the total amount of medical assistance payments made for the individual or family under review for the review month.

(iii) For erroneous payments resulting from failure to properly meet beneficiary liability, the amount of error is the lesser of—

(A) The amount of payments made on behalf of the family or individual for the review month; or

(B) The difference between the correct amount of beneficiary liability and the amount of beneficiary liability met by the individual or family for the review month.

(4) In determining the amount of erroneous payments, errors caused by technical errors are not included.

(5) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit;

(ii) The Federal subsample; or

(iii) Other arrangements as the Administrator may prescribe.

(6) When it is necessary for HCFA to exercise the authority in paragraph (c)(5) of this section, the amount that would otherwise be payable to the State under title XIX of the Act is reduced by the full costs incurred by HCFA in making these determinations. HCFA may make these determinations either directly or under contractual or other arrangements.

(d) *Computation for disallowance of FFP.*

(1) Each State must, for the April–September 1983 period and for each annual assessment period thereafter, have a payment error rate no greater than 3 percent or be subject to a disallowance in FFP.

(2) Before the beginning of each quarter, HCFA will project the anticipated medical assistance payment error rate for each State for that quarter. The anticipated payment error rate is based on the State's payment error rate for the two 6-month sample periods most recently completed by States and HCFA. If a State fails to complete either of those two periods, HCFA will assign the State an error rate as prescribed in paragraph (c)(5) of this section.

(3) The anticipated payment error rate established in paragraph (d)(2) of this section may then be adjusted by HCFA based on the effect anticipated by HCFA of corrective action implemented by the State and a final anticipated payment error rate will be established by the Administrator.

(4) Based on the anticipated error rate established in paragraph (d)(3) of this section, HCFA will reduce the State's

estimate of its FFP requirements for FFP for medical assistance for the quarter by the percentage by which the anticipated payment error rate exceeds the 3-percent national standard. This reduction will be applied against the State's total estimate of FFP for medical assistance expenditures prior to any other required reductions. The reduction will be noted on the State's grant award for the quarter and does not constitute a disallowance.

(5) After the end of each quarter, an adjustment to the reduction will be made based on the State's actual expenditures.

(6) After the actual payment error rate has been established for an assessment period, HCFA will compute the actual amount of the disallowance and adjust the FFP payable to each State based on the difference between the amount previously withheld for each quarter during the appropriate assessment period and the amount that should have been withheld based on the State's actual final error rate.

(7) HCFA will compute the amount to be withheld or disallowed as follows:

(i) Subtract the 3-percent national standard from the State's anticipated or actual payment error rate percentage.

(ii) If the difference is greater than zero, the Federal medical assistance funds for the period, excluding payments for those individuals whose eligibility for Medicaid was determined exclusively or in part by the Social Security Administration under a section 1634 agreement, are multiplied by that percentage. This product is the amount of the disallowance or withholding.

(8) A State's payment error rate for an annual assessment period is the sum of the weighted average of the payment error rates in the two 6-month review periods.

(9) The weights are established as the percent of the total annual payments that occur in each of the 6-month periods.

Example: Assume that the State has an anticipated payment error rate of 6 percent for the April–June 1983 quarter. The State submits an estimate for medical assistance expenditures of $100,000 in FFP for that quarter. The State's actual expenditures for the April–June 1983 quarter justify only $90,000 in FFP. The actual payment error rate for that quarter is determined to be 8 percent.

(i) The State has a payment error rate in excess of the tolerance level equal to 3 percent (6 percent −3 percent).

(ii) The State's initial grant award for the April–June 1983 quarter is reduced by $3,000 ($100,000×0.03).

(iii) After the quarter ends, and the State's actual expenditures are known, HCFA determines that the actual reduction should have been $2,700 ($90,000×0.03).

(iv) When the grant award for the April–June 1983 quarter is finalized, an increasing adjustment of $300 ($3,000 −$2,700) is made.

(v) When the actual payment error rate for the April–June 1983 quarter is determined to be 8 percent, the State is 5 percent above the tolerance level. HCFA notifies the State of a final disallowance of $4,500 ($90,000×0.05). Since $2,700 has already been withheld from the State, HCFA would offset a future grant award by an additional $1,800 ($4,500 −$2,700).

(e) *Notice to States and showing of good faith.*

(1) When the actual payment error rate data are finalized for the April–September 1983 assessment period and each annual assessment period thereafter, HCFA will establish each State's error rate and the amount of any potential disallowance. States that have error rates above the national standard will be notified by letter of their error rates and the amount of the potential disallowance.

(i) The State has 30 days from the date of receipt of this notification to show that this disallowance should not be made because it made a good faith effort to meet the national standard.

(ii) If the Administrator finds that the State did not meet its target error rate despite a good faith effort, HCFA will reduce the disallowance in whole, or in part, as the Administrator finds appropriate under the circumstances shown by the State.

(iii) A finding that a State did not meet the target error rate despite a good faith effort will be limited to extraordinary circumstances.

(iv) The decision of the Administrator will be communicated to the State by letter no later than 60 days from the date of receipt of all information needed to make a determination based on the State's request for a good faith waiver.

(2) Some examples of circumstances under which the Administrator may find that a State did not meet the target error rate despite a good faith effort are—

(i) Disasters such as fire, flood, or civil disorders that—

(A) Require the diversion of significant personnel normally assigned to Medicaid eligibility administration; or

(B) Destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations;

(ii) Strikes that result in the disruption of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes;

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulation, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for a 6-month period;

(iv) State actions resulting from incorrect written policy interpretation to the State by a Federal official reasonably assumed to be in a position to provide that interpretation; and

(v) The State timely developed and implemented a corrective action plan which the Administrator finds to be reasonably designed to meet the target error rate, but the target error rate was not achieved. In evaluating whether the State made a good faith effort in these circumstances, the Administrator will consider the following factors:

(A) Submittal of annual corrective action plans to the HCFA Regional Office by July 31 of each year with revisions to the plan made within 60 days of identification of additional error prone areas, other significant changes in the error rate, or changes in planned corrective action.

(B) The State must have operated an MQC eligibility program in accordance with the provisions of § 431.800.

(C) Demonstrated commitment by senior management to the error reduction program; for example, priorities and goals clearly enunciated to staff, accountability for performance, availability of resources.

(D) Sufficiency and quality of systems designed to reduce errors that are operational in the State; for example, BENDEX, SDX, monthly reporting, error prone profiles, local agency monitoring systems, computer clearances.

(E) Use of effective systems and procedures for the statistical and program analysis of QC and related data; for example, statistical tests, tabulations and cross tabulations, error prone profiles, corrective action committees, special studies.

(F) Effective management and execution of the corrective action process; for example, assignment of responsibilities, milestones for completing tasks, substantial completion of tasks, monitoring of progress.

(4) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed resources is not a ground for a waiver.

(5) A State may request reconsideration of a disallowance under this section in accordance with the procedures specified in 45 CFR Part 16.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: February 28, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: April 6, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-17187 Filed 6-23-83; 8:45 am]

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Friday
June 24, 1983

Part XXXIII

Office of Personnel Management

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Charitable Organizations; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Charitable Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) proposes to revise the regulations that govern the Combined Federal Campaign and other solicitations of Federal civilian and uniformed services personnel for contributions to private voluntary charitable organizations. The proposed revisions would implement Executive Order No. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), and improve technical aspects of administration of the Combined Federal Campaign.

DATES: Comments must be received on or before July 25, 1983.

ADDRESS: Send or deliver comments to Joseph A. Morris, General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5H30, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Joseph A. Morris, General Counsel, (202) 632–4632.

SUPPLEMENTARY INFORMATION: The voluntary extension of charitable assistance to people in need reflects a high level of civic responsibility. Permitting private sector charities to enter the Federal workplace to solicit for contributions, therefore, is a worthy and remarkable exercise of Presidential discretion. In the last two decades of the the exercise of this discretion through the Combined Federal Campaign, Federal employees have distinguished themselves by their civic generosity: the charitable impulse of the Federal worker runs deep.

The purposes of the Combined Federal Campaign were, from its inception, the generation of support for health and welfare charities and the minimization of attendant disruption in the Federal workplace. For most of the first two decades of the life of the Combined Federal Campaign, there was nearly universal concurrence that its focus was properly placed on health and welfare charities rather than on the entire universe of voluntary, non-profit, and philanthropic activities.

In the wake of judicial findings that the former ground rules of the Combined Federal Campaign inadequately and imprecisely distinguished among kinds of the philanthropies, OPM was persuaded a few years ago to experiment with a relaxation of its standards of eligibility for the Combined Federal Campaign. Over a three-year period, several entities that are not health and welfare charities (and therefore would not previously have been admitted to the Campaign) were admitted. During the 1982 Combined Federal Campaign, organized boycotts of the drive were instituted in several locations throughout the United States as a direct response to the increasing participation of non-health-and-welfare organizations, particularly advocacy groups, legal defense funds, and other entities oriented toward political causes. Employees in many locations reduced or eliminated their contributions. Only with the extreme effort and vigorous exhortation of many responsible union leaders, Federal officials, Members of Congress, and others, and with the assurance the Government would promptly undertake to review the groundrules of the Combined Federal Campaign, was the 1982 Campaign completed with success. Such extraordinary exertions cannot be sustained from year to year; such assurances must be fulfilled.

A failure after these events to focus the Campaign on its true and historical objective—the support of human health and welfare charity—would seriously undermine the Campaign as a means for helping needy Americans and for maintaining our society's essential commitments to the infirm, the aged, the poor, and the distressed. The courts themselves have recognized the obligation of the Government to establish clear standards and limits for programs that should serve unambiguous purposes.

The basic rules presently authorizing and controlling charitable solicitation in the Federal workplace were established by President Reagan in Executive Order No. 12353 (March 23,1982), 47 FR 12,785 (March 25, 1982). The regulations set forth at 5 CFR Part 950 were promulgated as final rules at 47 FR 29,496 (July 6, 1982) in implementation of that Executive Order. On February 10, 1983, President Reagan issued Executive Order No. 12404, which amended Executive Order No. 12353 by providing a clear statement of the purposes of the Combined Federal Campaign and by clarifying the criteria that determine the eligibility of a private voluntary charitable agency for authorization to solicit contributions in the Federal workplace.

As now clearly established by the President, the objectives of the Combined Federal Campaign are: (1) To lessen the burdens of government and of local communities in meeting needs of human health and welfare; (2) to provide a convenient channel through which Federal public servants may contribute to these efforts; (3) to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and (4) to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare. Consonant with these objectives the President has ordered that participation in the Combined Federal Campaign be limited to voluntary, charitable, health and welfare agencies that provide direct health and welfare services to individuals or their families.

There are many reasons for the participation restrictions set forth in Executive Order No. 12404 and these proposed regulations. First, the Government's interest in neutrality and avoiding the appearance of favoritism is strong and substantial. This is so not only because the Government provides the forum for solicitation, but also because the Combined Federal Campaign utilizes Federal employees to solicit funds at the Federal workplace, during working hours, at a significant additional expense to the Federal Government. Because the Government's involvement is great, the Government's concern for neutrality is correspondingly great.

Second, actual experience with the Combined Federal Campaign has convinced OPM that the inclusion of politically-oriented groups and advocacy organizations has resulted in extensive disruption of the Federal workplace and a decline in the number of contributors. The threat of even more serious harm—because of politicization—may be realized in future years if the Combined Federal Campaign does not concentrate on the support of charities directly providing health and welfare benefits rather than the financing of political, social, and other non-health-and-welfare causes.

Third, the Government has a strong interest in not subjecting its employees to politically-based appeals while they are a captive audience at work.

Fourth, OPM can now clearly see that the Combined Federal Campaign is in danger of inundation by advocacy and other non-health-and-welfare groups.

Scores of such organizations, reflecting a kaleidoscopic array of political, ideological, racialist, cultural, and other causes, as well as programs with non-human beneficiaries, have expressed interest in participating in the next and future Campaigns. OPM is concerned both about the escalation in controversy and polarization that will result and about the potential for sheer unmanageability to the numbers involved.

In proposing these regulations, OPM has attempted to resolve the several problems caused by the admission of advocacy, legal defense, and other such groups to the Combined Federal Campaign. In so doing, OPM has been careful not to discriminate against any particular viewpoint and to exclude advocacy evenhandedly, confining participation in the Campaign to traditional health and welfare charities.

Thus the line is drawn at private, voluntary, charitable agencies that directly provide health and welfare services to human beings.

Having drawn this line, one further reality must be confronted. A private, voluntary, charitable agency that directly provides health and welfare services to human beings could, in the course of events, undertake a certain amount of incidental lobbying, litigation, or other activities other than the rendering of health and welfare services. OPM proposes a simple numerical standard—15 percent of total annual expenditures—for making this distinction in order to enhance objectivity and predictability of decision-making. While recognizing that other lines of distinction might also be workable, OPM proposes the 15 percent standard on the basis of the belief that this is the most reasonable point of demarcation between health-and-welfare service providers and other organizations substantially oriented toward political or other non-health-and-welfare activity. It also has the virtue of similarity to parallel standards that already have congressional sanction and operational familiarity to the chartible community.

OPM recognizes that a purly numerical test based on expenditures may be unduly rigid, particularly in a context where much significant activity consists of volunteered sevices that do not readily lend themselves to precise quantification or expression in terms of expenditures. Accordingly, the proposed regulations would permit otherwise eligible health and welfare charities that do not meet the percentage test to petition for reconsideration of their applications for admission to the Combined Federal Campaign if they can show that certain conditions can be satisfied. These conditions include circumstances in which an evaluation of expenditures alone significantly distorts the true picture of a charity's activities. They also include situations in which a charity can demonstrate that activities that do not, on their face, constitute the delivery of qualifying health and welfare services in fact do directly further the charity's ability to render them. If any such petitions are granted, OPM proposes to issue written decisions in explanation of its determinations. The purpose of this procedure is to enhance the consistency and predictability of the eligibility process for the benefit of current and future applicants, without creating an unduly burdensome new system of paperwork.

The President has also eliminated the former requirement that all charities taking part in the Combined Federal Campaign be national in scope; local charities that provide direct human health and welfare services will now be permitted to participate in the Combined Federal Campaign in the local solicitation areas that they serve. Because local voluntary agencies will now be eligible, and eligibility has been thereby liberalized, eligibility criteria for federated groups and national voluntary agencies can be tightened for more efficient administration, without limiting access to the Combined Federal Campaign.

At bottom, the proposed regulations would modify 5 CFR Part 950 to ensure fidelity to the objectives declared by the President and to effectuate the eligibility changes that he has directed. In light of administrative experience gained in the 1982 Combined Federal Campaign, the proposed rules would also modify a few technical aspects of campaign administration. For clarity of presentation, only the proposed revisions of 5 CFR Part 950 are set forth in this notice. When, after comments have been received and considered, a notice of final rulemaking is published, 5 CFR Part 950, as amended, will be set forth in full.

Request for Specific Comments

In addition to welcoming comments on all aspects of the proposed regulations, OPM would appreciate receiving views in response to the following specific questions: What qualitative and quantitative standards should be applied within the framework of Executive Order No. 12404 for determining if a voluntary, charitable health and welfare agency that is otherwise eligible to solicit in the Combined Federal Campaign should be disqualified on account of lobbying, litigation, or other non-health-and-welfare service activities? Should OPM prescribe a specific numerical standard that depends on ratios comparing funds devoted to lobbying, litigation, and other non-health-and-welfare service activities with funds expended overall?

Finding on Comment Period

The Director of OPM finds that good cause exists for setting the comment period on this proposed rulemaking at 30 days. This comment period will allow sufficient time for all interested Federal agencies, Federal employees, Federal employee organizations and unions, voluntary charitable agencies, charitable federated groups, and other parties to comment on the proposal, which has been generally anticipated on account of the widespread public notice that has been given to Executive Order No. 12404 (February 10, 1983). It will also permit a speedy process of evaluating and assimilating comments and promulgating a final rule, all necessary in order to permit OPM to solicit applications, hold public eligibility hearings, organize local compaigns, and perform the other tasks essential to the conduct of a fair, timely, orderly, and successful Combined Federal Campaign in 1983.

Scope

This part governs all fund-raising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States. Thus it is applicable to civilian and uniformed services personnel in all Executive departments and agencies throughout the world.

E.O. 12291, Federal Regulations.

OPM has determined that this is not a major rule for the purposes of Executive Order No. 12291, Federal Regulations, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. The nominal costs to voluntary

charitable agencies and charitable federated groups that are associated with application for admission to, and voluntary participation in, the Combined Federal Campaign are essentially the same as under current and past procedures.

List of Subjects in 5 CFR Part 950

Charitable contributions, Goverment employees.

United States Office of Personnel Management.

Donald J. Devine,

Director.

PART 950—[AMENDED]

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 950 as follows:

1. Section 950.101 would be revised to read as follows:

§ 950.101 Definitions.

(a)(1) The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that:

(i) Is organized and operated for the purpose of rendering one or more of the following services directly to, and for the direct benefit of, human beings:

(A) Delivery of health care to ill of infirm individuals;

(B) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(C) Health research for the benefit of ill or infirm individuals;

(D) Delivery of education, training, and care to physically and mentally handicapped individuals;

(E) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(F) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(G) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(H) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(I) Protection of families that, on account of need, poverty, indigence, or emergency, are in long-term or short-term need of family, child-care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(J) Direct relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(K) Direct relief of needy, poor, and indigent adults and of the elderly;

(L) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(M) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or

(N) Lessening of the burdens of government with respect to the provision of any of the foregoing services;

(ii) Meets all eligibility requirements established in this part; and can show that it met all such requirements in the fiscal year of the organization for the period immediately preceding the closing date established by the Director for the submission of its application for admission to the Combined Federal Campaign for a particular year;

(iii) Is an organization described in, and qualifying under, 26 U.S.C. 501(c)(3); is not an "action organization" within the meaning of 26 CFR 1.501(c)(3)–1(3); and is eligible to receive tax-deductible contributions under 26 U.S.C. 170;

(iv) Does not participate in, or intervene directly or indirectly in, any political campaign on behalf of or in opposition to any candidate for public office, or on behalf of any side or position in a public referendum, initiative, or similar procedure; and

(v) Except as provided in 5 CFR 950.101(a)(4), has articles of organization that do not expressly empower the organization to, and the organization does not, expend more than the proportions set forth in 5 CFR 950.101(a)(2) of its total expenditures on any or all of the following activities:

(A) Activities that are not in furtherance of the purposes set forth in 5 CFR 950.101(a)(1)(i);

(B) Activities (other than activities directly related to the organization's participation in the Combined Federal Campaign) for purposes of influencing legislation or rulemaking at any level of Federal, State, or local government; and

(C) Activities for purposes of litigation (including contributing to the expenses thereof), other than litigation undertaken as a necessary part of the provision of legal aid services as set forth in 5 CFR 950.101(a)(1)(i)(H); *provided that* the activities described in this subsection (5 CFR 950.101(a)(i)(v)(C)) shall not include activities to protect the existence of the organization, its tax exempt status, its participation in the Combined Federal Campaign, or its own direct and private interests, as opposed to the interests of the causes or policy goals that it supports.

(2) The maximum level of expenditures permitted by 5 CFR 950.101(a)(1)(v) without disqualifying an organization from participation in the Combined Federal Campaign shall be 15% of the organization's total annual expenditures; *Provided that* the level of expenditures thus made in the aggregate, on any and all activities identified in 5 CFR 950.101(a)(1)(v) may not, in any one year, exceed the sum of $1,000,000; and *Provided further that* no more than one-fourth of the maximum level of expenditures thus made may be expended in any one year as grass roots expenditures.

(3) For purposes of the preceding subsection (5 CFR 950.101(a)(2)), the following definitions shall apply:

(i) The term "influencing legislation" shall have the same meaning that it has in 26 U.S.C. 4911(d);

(ii) The term "influencing rulemaking" shall have the same meaning that the term "influencing legislation" in 26 U.S.C. 4911(d) would have if the term "rulemaking" were substituted therein for the term "legislation", and the term "government agency" were substituted therein for the term "legislative body";

(iii) The term "rulemaking" shall have the same meaning that the term "rule making" has in 5 U.S.C. 551(5);

(iv) The term "expenditures" shall mean all money expended or debts incurred by the organization;

(v) The term "total annual expenditures" shall means all expenditures made by the organization in its fiscal year; and

(vi) The term "grass roots expenditures" shall mean all expenditures made by the organization for the purposes described in 49 U.S.C. 4911(d)(1)(A) and for the purposes that would be described in 49 U.S.C. 4911(d)(1)A) if the term "rulemaking"

were substituted therein for the term "legislation."

(4) An organization that has been notified by the Director that it does not satisfy the requirements of 5 CFR 950.101(a)(1)(v) may nonetheless petition the Director for inclusion in the Combined Federal Campaign. The Director shall, from time to time, announce through the Federal Personnel Manual System or other appropriate instruments the time, place, and manner in which such a petition may be filed. The petition shall set forth specific facts and circumstances in support thereof. The Director shall grant the petition if he determines that the organization's activities described in paragraph (a)(1)(v) (A), (B), and (C) of this section taken as a whole:

(i) Do not significantly exceed the limits described in 5 CFR 950.101(a)(2), taking into account other indices of activity not adequately accounted for by the measurement of expenditures (such as the use of volunteer services or in-kind contributions); and

(ii) Are in direct furtherance of the organization's activities described in 5 CFR 950.101(a)(1)(i). Any such determination by the Director shall be in writing, shall succinctly state the basis for the determination, and shall be available to the public.

2. 5 CFR 950.201(a) would be revised to read as follows:

§ 950.201 Development of policy and procedures.

(a) *Director, U.S. Office of Personnel Management.* Under Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, and No. 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fund-raising policies and procedures in the Executive Branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this part for the conduct of fund-raising activities in Federal agencies.

* * * * *

3. In § 950.211, paragraphs (g) and (h) would be added to read as follows:

§ 950.211 Local Federal coordinating committees.

(g) *Integrity of local Federal coordinating committee.* A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) *Review of local Federal coordinating committee eligibility decisions.* Local eligibility decisions shall be made by the local Federal Coordinating Committee. Local Committees shall determine whether a voluntary agency has direct, human health and welfare services available to Federal employees in the local campaign solicitation area. Such decisions shall be made at an open meeting of the local Federal Coordinating Committee and upon giving notice to interested parties. Interested parties denied admission to the Campaign may petition the local Federal Coordinating Committee to reconsider its denial of admission. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within ten (10) days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within ten (10) days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of 5 CFR 950.525(e), to the Director, whose decision shall be final.

4. 5 CFR 950.303 would be revised to read as follows:

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising shall be either federated or independent. A national *federated* group shall meet the same eligibility criteria as a national voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(b) An independent campaign is one conducted by a local unit of a national voluntary agency through its own fund-raising organization, or by a local non-affiliated agency which otherwise meets established eligiblity criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

5. In 5 CFR 950.307, paragraph (f) would be added to read as follows:

§ 950.307 Definitions of terms used in Federal arrangements.

* * * * *

(f) *Local non-affiliated voluntary health and welfare agency.* Local non-affiliated voluntary agencies that provide health and welfare services in the local area, and otherwise meet the established eligibility criteria of this part, other than the national scope criterion of 5 CFR 950.403(c).

6. 5 CFR 950.403(c)(3)(iv) would be revised to read as follows:

§ 950.403 General requirements for National Agencies.

* * * * *

(c) *National Scope.* A National voluntary agency must demonstrate that:

* * * * *

(3) It has national scope, that is, scale, goodwill, and acceptability; this may be demonstrated as follows:

* * * * *

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

7. 5 CFR 950.405 (a)(1) and (a)(6) would be revised to read as follows:

§ 950.405 Specific requirements.

(a) *Eligibility.* To be eligible for approval by the Director for participation in the Combined Federal Campaign, a national voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in 5 CFR 950.101;

* * * * *

(6) That has a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of that particular voluntary agency. Demonstration of direct and substantial

presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(i) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling training, scholarship assistance, transportation, feeding, institutionalization, sheltering, and clothing, to persons working and living in the local campaign community.

(ii) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(iii) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(iv) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency.

Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the eligibility criteria set forth in this Part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible to participate in each local solicitation area of the Combined Federal Campaign.

* * * * *

8. Section 950.501 would be revised to read as follows:

§ 950.501 Authorized local voluntary agencies.

A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope, and shall be evaluated under the criteria set forth in this Part by the local Federal Coordinating Committee recognized by the Director for that local community. A local affiliate of an eligible national agency shall be given a presumption of eligibility for admission to the local campaign by the local Federal Coordinating Committee, but it must also meet the local presence criterion of 5 CFR 950.405(a)(6). Local non-affiliated voluntary health and welfare agencies shall be evaluated separately by the local Federal Coordinating Committee to determine whether they are eligible under this Part. If a local non-affiliated voluntary agency receives less than $3,000 in designated contributions in a local campaign for a single year, then the local Federal Coordinating Committee may, in its discretion, debar the local non-affiliated voluntary agency from participating in the local campaign for a period not to exceed three (3) years thereafter.

9. Section 950.503(a) would be revised to read as follows:

§ 950.503 Participation in Federal campaigns by local affiliated agencies.

* * * * *

(a) Arrangements shall be established by each local Federal Coordinating Committee to evaluate local voluntary agencies that seek to solicit separately from local federated groups. These procedures shall require eligible local voluntary agencies to preregister with the local Federal Coordinating Committee to participate in the Combined Federal Campaign for that year. An eligibility meeting shall be held to decide which agencies are eligible. Arrangements shall be made by the Central Receipt and Accounting Point to distribute contributions to eligible voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

* * * * *

10. Section 950.521(b) would be revised to read as follows:

§ 950.521 Campaign and Publicity Materials.

* * * * *

(b) distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through the Federal agency occupational health units, and not the CFC coordinators. While there is no intent to restrict the normal educational or service activities that voluntary agencies provide in Federal agencies, no special distribution of materials or services should be planned within Federal facilities during the campaign, giving undue publicity to a particular voluntary agency or category of voluntary agencies during the campaign period. Violation of this requirement by any voluntary agency may be grounds for the local Federal Coordinating Committee to disqualify the voluntary agency from further participation in the local CFC for that year after due notice to the voluntary agency concerned.

* * * * *

11. In Section 950.525, paragraph (e) would be added as follows:

§ 950.525 National Coordination and Reporting.

* * * * *

(e) Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group or by any applicant for solicitation privileges in a local campaign shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion, and of going forward shall be borne by the appellant. An appeal may be dismissed as untimely unless it is received by the Director within the ten (10) days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken. Every appeal shall be submitted in writing; shall set forth a concise Statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the five (5) days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest. The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in his sole discretion, stay any decision of a local Federal Coordinating Committee pending his review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so.

(Executive Orders Nos. 12353 and 12404)

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
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Note: **The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.**

List of Public Laws

Last Listing June 17, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.J. Res. 234/Pub. L. 98–41 Designating the week beginning June 19, 1983, as "National Children's Liver Disease Awareness Week". (June 20, 1983; 97 Stat. 211) Price: $1.50

S.J. Res. 42/Pub. L. 98–42 Designating Alaska Statehood Day, January 3, 1984. (June 22, 1983; 97 Stat. 212) Price: $1.50

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