commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and price range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the highest prices, through successively lower prices to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. successful competitive bidders will be required to pay the price that they bid. Those submitting noncompetitive tenders will pay the weighted average price in two decimals of accepted competitive tenders. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the price. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3. 6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Thursday, April 5, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from January 11, 1979, to April 5, 1979, in the amount of $20.74210 per $1,000 of securities allotted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Tuesday, April 3, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Monday, April 2, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer indentifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

SUPPLEMENTARY STATEMENT: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,
Fiscal Assistant Secretary.

[FR Doc. 79-9294 Filed 3-23-79; 3:06 pm]

[6035-01-M]

INTERSTATE COMMERCE COMMISSION

AGRICULTURAL COOPERATIVE NOTICE TO THE COMMISSION OF INTENT TO PERFORM INTERSTATE TRANSPORTATION FOR CERTAIN NONMEMBERS

MARCH 23, 1979.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Cross Country Farming Cooperative, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Pine Island Turnpike, Pine Island, New York 10969. Principal Mailing Address (Street No., City, State, and Zip Code): c/o Arnold Ellerin, 41 Dolson Avenue, Middletown, New York 10940. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Kalter & Gottlieb, Esq., Church Street, Woodbourne, New York 12788. Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address).

(2) North State Farm Lines, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Post Office Box 690, Hawthorne, Florida 32640. Principal Mailing Address (Street No., City, State and Zip Code): Route 3 Box 28, Hawthorne, Florida 32640. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Robert J. Spence, P.O. Box 690, Hawthorne, Florida 32640. Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address).

(3) Tierras Unidas, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: P.O. Box 10790, Santa Ana, California 92711. Principal Mailing Address (Street No., City, State and Zip Code): 2201 E. 4th Street, Santa Ana, California 92705. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Dale Wells, P.O. Box 10790, Santa Ana, California 92711. Person To Whom Inquiries and Correspondence Should Be Addressed.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-9349 Filed 3-27-79; 8:45 am]

[7035-01-M]

[Notice No. 54]

ASSIGNMENT OF HEARINGS

MARCH 23, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MCC 10143 O.N.C. Freight Systems, Inc., v Herbert D. Needel DBA Tucson Package Delivery, now assigned for hearing on April 3, 1979, at Tucson, Arizona and will be held in Room 4T, U.S. Federal Building, 301 West Congress.

No. MC 71593 (Sub-No. 10F), Forwarders Transport, Inc., now assigned for hearing on April 17, 1979, at New York, New York and will be held in room D-22206, Federal Building, 26 Federal Plaza.

No. MC 93649 (Sub-No. 22F), Gaines Motor Lines, Inc., now assigned for hearing on April 18, 1979, at New York, New York and will be held in Room D-22206, Federal Building, 26 Federal Plaza.

No. MC 107295 (Sub-No. 873F), Pre-Fab Transit Company, now assigned for hearing on April 23, 1979, at Boston, Massachusetts and will be held on Fifth Floor, 150 Causeway.

No. MC 142887 (Sub-No. 1), New England Bulk Terminal, Inc., now assigned for hearing on April 24, 1979, at Boston, Massachusetts, and will be held on the Fifth Floor, 150 Causeway.

No. MC 68909 (Sub-no. 8F), Mullen Bros., of North Adams, Mass., Downing Inc., now assigned for hearing on April 25, 1979, at Boston, Massachusetts and will be held on the Fifth Floor, 150 Causeway.

No. MC 114569 (Sub-No. 236F), Shaffer Trucking, Inc., now assigned for hearing on April 24, 1979, (2 days), at Tampa, Fl. in a hearing room to be later designated.

No. MC-C-10300 Fogarty Van Lines, Inc.—Investigation And Revocation of Certificates, now assigned for hearing on April 26, 1979, (2 days), at Tampa, Fl., in a hearing room t be later designated.

No. MC 11746 (Sub-No. 58F), Newman and Pemberton Corporation, now assigned for continued hearing on April 10, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-9350 Filed 3-27-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) U.S.C. 552b(e)(3).

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[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on March 22, 1979, the Corporation's Board of Directors met by telephone conference call to consider certain matters which it determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac, and concurred in by Director John G. Heimann, (Comptroller of the Currency), required its consideration on less than seven days' notice to the public.

The following matters were considered in open session:

Memorandum proposing that the Corporation process national bank call reports and trust asset surveys.

Memorandum proposing the negotiation of a contract for the performance of a study as to the feasibility of the Corporation's providing computer support to the Office of the Comptroller of the Currency.

The Board then considered certain personnedl actions in closed session, pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)), after determining, on motion of Director Jophn G. Heimann (Comptroller of the Currency), seconded by Chairman Irvine H. Sprague, and concurred in by Director William M. Isaac (Appointive), that the public interest did not require consideration of the matters in a meeting open to public observation.

The Board further determined that no earlier notice of the meeting was practicable.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Acting Executive Secretary of the Corporation, at 202-389-4425.

Dated: March 23, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
HOYLE L. ROBINSON,
Acting Executive Secretary.

[S-599-79 Filed 3-26-79; 10:45 am]

[7545-01-M]

2

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 11:30 a.m., Wednesday, April 4, 1979.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Promotion of staff attorneys in view of the "demise" of Whitten rider.

CONTACT PERSON FOR MORE INFORMATION:

William A. Lubbers, Executive Secretary, Washington D.C. 20570, Telephone, 202-254-9430.

Dated, Washington, D.C., March 26, 1979.

By direction of the Board:

NATIONAL LABOR RELATIONS BOARD,
GEORGE A. LEET,
Associate Executive Secretary.

[S-600-79 Filed 2-26-79; 11:15 am]

[7710-12-M]

3

POSTAL SERVICE.

BOARD OF GOVERNORS

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Tuesday, April 3, 1979, at the Sectional Center, 21st South and Redwood Road, Rooms 210-215, Salt Lake City, Utah. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

AGENDA

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Report of the Regional Postmaster General.

(Mr. Morris, Regional Postmaster General, will report on postal conditions in the Western Region.)

4. Recommended Decision of the Postal Rate Commission on the Domestic Mail Classification Schedule.

(The Governors will consider the Recommended Decision of November 29, 1978, concerning the Proper Scope and Extent of the Mail Classification Schedule (Commission Docket No. MC76-5).)

5. Recommended Decision of the Postal Rate Commission re surcharge for nonstandard mail. (The Governors will consider the Recommended Decision of February 26, 1979, proposing that a seven-cent surcharge be adopted for nonstandard first-class mail and single piece third-class Mail (Docket No. R78-1).)

6. Effective date for minimum size standards.

(Section 002.1 of the Domestic Mail Classification Schedule currently states that the minimum size standards therein prescribed will become effective not earlier than November 30, 1978. The Board will consider fixing the effective date for these standards, pursuant to 39 U.S.C. 3625(f).)

7. Modification to the Bylaws of the Board to reflect the advent of the Postal Career Executvie Service.

(Section 3.4 of the Bylaws of the Board of Governors (39 CFR parts 1-6) provides that a number of matters are reserved for decision by the Board. One of these is the compensation of officers and executives "in PES grade 34 and above". (The "PES" salary schedule has been changed to the "EAS" schedule.) Since adoption of the Postal Career Executive Service will generally result in the elimination of grades for senior officers and executives in the Postal Service, it is proposed that the Bylaws be modified so as to reserve for Board decision the salaries of officers of the Postal Service. "Officers" will be defined as including Assistant Postmasters General and above, as well as a small number of ancillary positions.)

8. Temporary classification change proposal for Express Mail Metro Service.

(Under the Postal Reorganization Act (39 U.S.C. 3641(e)), if the Postal Rate Commission does not transmit a recommended decision on a change in the Mail Classification Schedule to the Governors of the Postal Service within ninety days after the Postal Service has submitted to the Commission a request for such a recommended decision, the Postal Service, upon ten days notice in the Federal Register, may place into effect temporary changes in the Mail Classification Schedule in accordance with proposed changed under consideration by the Commission. The Postal Service requested a recommended decision on December 7, 1978, to change the Domestic Mail Classification Schedule to include a new Express Mail Metro Service. It does not appear that the Postal Rate Commission will transmit its recommended decision on this matter within ninety days after December 7. The Board will consider the question of whether the Postal Service should place the proposal into effect on a temporary basis.)

9. Report on Finance Group Programs.

(Mr. Finch, Senior Assistant Postmaster General, Finance Group, will brief the Board on current developments in the Finance Group.)

10. Capital Investment Projects:

a. Proposed purchased of post office building, Honolulu, Hawaii.

(The Board will consider a proposal to purchase the currently leased post office building at 335 Merchant Street in Honolulu, Hawaii, and a nearby parking lot. The building is currently owned by the United States and maintained by the General Services Administration.)

b. Proposed new General Mail Facility at Norfolk, Virginia.

(The Board will consider investment in a proposed new general mail facility and vehicle maintenance facility in Norfolk, Virgina.)

LOUIS A. COX,
Secretary.

[S-598-79 Filed 3-26-79; 10:27am]

[8240-01-M]

4

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., April 4, 1979.

PLACE: 955 L'Enfant Plaza North, S.W., Board Room, Room 2-500, Fifth Floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions closed to the public (9 a.m.)

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
4. Litigation report.

Portions open to the public (1:30 p.m.)

5. Approval of minutes of the March 1, 1979 Board of Directors meeting.
6. Report on Conrail monitoring.
7. Consideration of Financing Agreement.
8. Appoint Conrail Board Members.
9. Election of Executive Committee.
10. Consideration of Conrail Quarterly Investment Commitment.
11. Consideration of Conrail April drawdown request.
12. Consideration of 211(h) request.
13. Contract Actions (extensions and approvals).

[S-601-79 Filed 3-26-78; 3:03 p.m.]

federal register

WEDNESDAY, MARCH 28, 1979

PART II

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COASTAL ZONE MANAGEMENT PROGRAM

Development and Approval Provisions

[3510-08-M]

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: These final regulations revise and incorporate several sets of existing regulations dealing with development and approval of State coastal management programs. These regulations reflect the most current and accurate interpretation of the program approval requirements of the Office of Coastal Zone Management (OCZM), NOAA.

EFFECTIVE DATE: April 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Carol Sondheimer, Chief, Policy and Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, 202-634-4245.

SUPPLEMENTARY INFORMATION: NOAA is issuing these final regulations pursuant to sections 305, 306 and 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereafter referred to as the "Act".

These final regulations revised and supersede the Interim—Final Program Development and Approval Regulations (15 CFR Part 923) published in the FEDERAL REGISTER on March 1, 1978. (43 FR 8378.)

When NOAA issued the Interim—Final Regulations (FR, Vol. 43, No. 41, pages 8378-8432), a 60-day comment period ending April 30, 1978 was provided. During the comment period, NOAA received a number of requests to consider additional comments related to five major issues: (1) changes to approved State coastal management programs, (2) adequate consideration of the national interest, (3) uses of regional benefit, and (4) incorporation of State and local air and water quality control standards pursuant to the Clean Water and Clean Air Acts, and (5) amendments to approved State programs. In order to consider additional comments and to resolve some of the complexities related to these issues, NOAA issued a notice in the FEDERAL REGISTER on July 6, 1978 (Vol. 43, No. 130, pages 29106-29109) extending the comment period on the Interim—Final Regulations to August 31, 1978.

During the period from March 1 to August 31, 1978, OCZM received comments from 11 States (Alaska, Illinois, Massachusetts, Michigan, New Hampshire, New York, Oregon, Texas, Washington and Wisconsin), 9 Federal agencies (Department of the Army—Corps of Engineers, Department of Commerce—National Marine Fisheries Service, Department of Energy, Environmental Protection Agency, Federal Energy Regulatory Commission, Department of Housing and Urban Development, Department of the Interior, Nuclear Regulatory Commission, and Department of Transportation), 4 public interest groups (Environmental Defense Fund, Natural Resources Defense Council, Rhode Island League of Cities and Towns, Sierra Club), 3 groups representing energy industries (American Petroleum Institute, Edison Electric Institute, and Florida Power and Light Company), and 5 from unclassified groups or individuals (Coastal Environmental Resources Institute, Louis Gaitanis, Brad Green, Rose, Schmidt, Dixon, Whyte and Hardesty, and Wald, Harkrader and Ross). In addition, during the comment period, OCZM met with representatives of the following: Department of the Interior, the Environmental Protection Agency, the Natural Resources Defense Council, the American Petroleum Institute, the Edison Electric Institute, and the Florida Power and Light Company.

All comments were given full consideration. Some recommendations were adopted in their entirety or in modified form. Others were rejected as being inappropriate or legally impermissible. NOAA would like to take this opportunity to express its gratitude to each government agency, organization or individual that submitted comments.

Comments on the Interim—Final Regulations tended to reiterate issues raised in connection with the August 29, 1977 Proposed Program Approval Regulations (42 FR 43552). Comments tended to fall into two broad categories: the first relating to basic philosophical differences on the part of reviewers with NOAA's interpretation of the statute and Congressional intent. In this category fall issues related to the adequacy of environmental protection provided by the regulations, what constitutes adequate consideration of the national interest, the relationship between facilities in which there is a national interest and uses of regional benefit.

The second major category of comments addresses technical issues, such as the addition or deletion of Federal agencies and other items from lists and tables. NOAA has accommodated these reviewers to the extent the recommended changes are legally permissible and add to the sense and clarity of the regulations.

In addition, NOAA has revised section 923.62—Environmental Assessment to reflect changes made in the Council of Environmental Quality's Final Regulations (FR, Vol. 45, No. 230, November 29, 1978) on the content of environmental impact statements.

DISCUSSION OF MAJOR ISSUES AND NOAA RESPONSE

FORMAT OF THE REGULATIONS

A number of reviewers suggested that the format in the Interim—Final Regulations was confusing. These commentators noted that "comments" frequently were separated from relevant "requirements" by several unrelated sections and that, occasionally, requirements were found in "comments." Several reviewers suggested that some "comments" contained language that did not clarify or complement the "requirements," and that some "comments" contained contradictory or confusing language.

In keeping with the intent of Executive Order 12044 (issued March 23, 1978) to keep government regulations clear and brief and in response to the recommendations of commentators, NOAA has made a number of changes in the format of these final regulations. Comments related to a particular requirement have been placed under the requirement and are clearly distinguished from the requirement by type size. General comments that relate to several requirements have been clearly labeled as such and placed after the entire set of requirements. NOAA has endeavored to make the regulations clearer and more understandable by simplifying the length and type of commentary. A number of comments have been rewritten, consolidated or deleted. Where appropriate, some of the requirements also have been rewritten or consolidated. Despite these changes in format, relatively few substantive changes have been made in the requirements for program developmnent and approval. Where substantive changes have been made, they are noted in this preamble.

ADEQUACY OF ENVIRONMENTAL PROTECTION

Several reviewers, especially environmental groups, questioned the degree to which the regulations provide sufficient assurance that resource protection will be the major focus of state coastal management programs. A number of these reviewers objected to the emphasis on resource management rather than on resource protection. These commentators were concerned that unless the regulations were strengthened, inadequate programs would qualify for Federal approval.

In order to emphasize resource protection, one reviewer suggested that the regulations contain a clear statement that state programs would be evaluated in light of the primary conservation thrust of the Act, and recommended reinstating language that had appeared in earlier program approval regulations.

Some commentators requested that the determination of uses subject to the management program be based on an analysis of capability and suitability of coastal resources for development, and on analysis of the impacts various uses may have on these resources.

Other reviewers objected to the manner in which NOAA incorporated the Executive Orders on Wetlands (E.O. 11990) and Floodplains (E.O 11988) into the Interim—Final Regulations. These reviewers suggested that OCZM specify the substantive standards that would be used to evaluate the adequacy of state coastal programs in this regard.

NOAA Response: While the Act emphasizes resource protection, it does not exclude resource use and development where appropriate. The States are given the responsibility in the Act to choose the appropriate mix between preservation and development based on requirements for consultation with a wide variety of governmental bodies, interest groups and the public. A major part of OCZM's review involves an assessment of the appropriateness of the mix. Nonetheless, resource protection can be given greater emphasis in the regulations, while still recognizing appropriate resource use and development.

Accordingly, section 923.3(b), containing the overall policy requirements on which OCZM relies most heavily to assure adequate resource protection in state programs, has been rewritten to require that states * * *

> "take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable or valuable area."

In response to the suggestion that capability and suitability analyses be required, NOAA does not find any statutory language or legislative history that would make such analyses mandatory nor does NOAA believe these are or need be the sole means for determining use permissibility.

NOAA has revised the final regulations to be more explicit about the types of policies state programs must contain in order to be responsive to the Executive Orders on Wetlands and Floodplains. In addition, NOAA has added more detailed guidance to assist states in their response to this requirement. (See § 923.3(b)(2)(ii) and *Comment.*)

ADEQUATE CONSIDERATION OF THE NATIONAL INTEREST

Comments were received addressing two major issues regarding the interpretation of section 306(c)(8) of the Act, and related § 923.52 of these regulations, having to do with (1) how the "national interest" is defined, and (2) what constitutes "adequate consideration" of this interest. Comments of a similar or identical nature have been received and responded to in previous publication of these regulations. (See Preamble to Interim—Final Regulations issued March 1, 1978, pages 8379-8380 and 8391-8393. See also Notice of Extension of Comment Period issued July 6, 1978, pages 29107-29109.) A related concern of reviewers—the relationship of section 306(c)(8) of the Act ("national interest") to section 306(e)(2) ("uses of regional benefit")—is discussed in connection with comments on "Uses of Regional Benefit."

To review the major issues:

(1) The determination of what constitutes a facility in which there is a national interest and how that interest is defined has been difficult because the statute and legislative history provide little, if any, guidance on this matter and because numerous parties involved with or affected by this program have differed greatly as to the proper interpretation.

Some reviewers have maintained that there is a single national interest for any particular type of facility and that that interest is defined in national legislation relating to that type of facility. Thus, for example, the national interest in interstate highways would be defined in the National Highways Act.

Others have suggested that the national interest in a particular type of facility should be defined by those Federal agencies most closely associated with the facility. Under this approach, as an example, the Department of Energy and the Department of the Interior would define the national interest in energy production and transmission facilities, based on their legislatively defined missions.

Still others have suggested that there is no single national interest associated with a particular type of facility; rather there are a number of associated, sometimes conflicting, national interests. As an example, the national interest associated with providing interstate transportation facilities would include the need for efficient and economical transportation modes and the need to provide this transportation in a manner that recognizes the national interest in preserving wetlands, protecting rare and endangered species, avoiding development of floodplains, etc.

Some have maintained that it is the responsibility solely of Federal agencies to determine what constitutes the national interest in any particular type of facility; others have suggested that this determination should be left to the States; and still others have suggested that the national interest should be distilled from a variety of sources including local governments, interest groups and the general public as well as Federal and state agencies.

NOAA Response: The final regulations (section 923.52(c)) require that, at a minimum, States solicit views on what constitutes the national interest in particular types of facilities from Federal agencies most directly associated with the need for those facilities. However, the final regulations acknowledge (as did the Interim-Final Regulations) that there can be several sources which may specify the national interest in a particular facility. These sources may include Federal laws and legislation, policy statements from the President, statements from Federal agencies, and plans, reports or studies from Federal, State or interstate groups. The predominant emphasis is on the Federal perspective and input. In practice, States have tended to rely on statements of mission from Federal agencies (when these have been made available to the States). The other issue related to the definition of facilities is the extent to which resource types (such as wetlands, endangered flora and fauna, historic and cultural resources, etc.) should be considered "facilities," and the national interest in those resources considered as part of the requirements of section 306(c)(8) of the Act. This issue has more to do with what constitutes "adequate consideration" of the national interest than with the definition of facilities and is addressed below in greater detail in the discussion of what constitutes "adequate consideration" of the national interest. It should be noted here, however, that the final regulations do not define resources as "facilities" for which the national interest must be considered.

(2) Once the relevant national interest has been identified, the issue remains what constitutes adequate consideration thereof on the part of a State.

Some have suggested that accommodation of Federal agency views of the national interest should constitute adequate consideration. Others have suggested that accommodation of the facility itself is required to constitute adequate consideration. Other commentators have suggested that adequate consideration requires a balancing of the national interest in the need for a particular type of facility with other national concerns related to resource protection. Still others have suggested that a procedure to consider the national interest must be set forth specifically in State legislation in order to be judged adequate.

NOAA Response: The final regulations (see § 923.52(c)) stipulate that in order for a State's consideration of the national interest in a particular type of facility to be deemed adequate, a State must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development, and the sources relied upon for the statement of national interest;

(2) Indicate how and where the consideration of this national interest is reflected in the substance of the management program; and

(3) Describe a process for continued consideration of the national interest in particular facilities during program implementation, including a clear and detailed description of the administrative procedures and decision points where this interest will be considered.

These requirements do not stipulate that a State accommodate the national interest in a particular facility to the extent of assuring that such facilities will be sited in a state's coastal zone. They do assure, however, that there is a procedure during both program development and program implementation to assess the national interest in such facilities as well as their locational requirements. The regulations do not treat resources as facilities subject to the special consideration afforded facilities by section 306(c)(8) of the Act. They do, however, recognize that natural resource considerations of a national nature can and should enter into the assessment of the demand for and locational needs of particular types of facilities (see § 923.52(c)(4)). The regulations do not require the procedure for considering the national interest to be set forth specifically in State legislation. They do, however, require a legally enforceable basis (either in State legislation or agency rules and regulations) for establishing and implementing the procedure for national interest consideration that will be used once the management program is approved.

Reviewers should note the addition of a new comment to § 923.52(c)(4) which indicates OCZM's availability during program implementation to assist states in soliciting relevant Federal agency views regarding the national interest in a particular facility when it is proposed to be built in a State's coastal zone.

USES OF REGIONAL BENEFIT

NOAA has continued to receive comments regarding two basic issues related to section 306(e)(2) of the Act, and related sections § 923.13 and § 923.43 of the Interim-Final Regulations, dealing with uses of regional benefit. These two issues have to do with (1) whether facilities in which there is a national interest" are included as uses of regional benefit (URBs) and (2) whether States must have the ability to override local regulations in order to satisfy the requirement of section 306(e)(2) that local regulations "do not unreasonably restrict or exclude land and water uses of regional benefit." These issues have been raised and responded to previously. (See same pages of the FEDERAL REGISTER cited in connection with comments on "Adequate Consideration of the National Interest.")

(1) A number of reviewers continue to maintain that facilities referred to in section 306(c)(8) of the Act should be defined by regulation to be uses of regional benefit and the requirements of sections 306 (c)(8) and (e)(2) should be read in conjunction.

Others have expressed the view that these two sections of the Act should not be read in conjunction because they are derived from different concerns and were meant to address different issues. Accordingly, they were intended as separate and distinct requirements. Under this interpretation, consideration of the national interest is seen as a mechanism to assure States consider national (or multistate) impacts and benefits of major facilities. The URB requirement of section 306(e)(2) of the Act is viewed as being similar to the concept of "development of regional benefit" contained in Federal land use legislation under consideration at approximately the same time the Coastal Zone Management Act was being considered in 1972. In the Federal land use legislation, the area of benefit is defined in terms of multilocality, intrastate areas, and not in terms of national considerations. The "development of regional benefit" concept is derived from the American Law Institute (ALI) Model Land Development Code.

NOAA Response: These Final Regulations (see section § 923.12(b)(1)) contain requirements similar to those in the Interim-Final Regulations. The interpretation of URB in the regulations is similar to that contained in the ALI code. There is no statutory language or legislative history to indicate that sections 306 (c)(8) and (e)(2) of the Act were meant to be read in conjunction nor that "national interest" facilities were meant to be URBs. Accordingly, these regulations leave it to States to define URBs, using multicounty effect and direct and significant impact on coastal waters as suggested criteria. The option is left to States, however, to define "national interest" facilities as URBs since there is nothing in the Act or legislative history to preclude such option.

Beyond the relationship of sections 306 (c)(8) and (e)(2) of the Act, reviewers have questioned whether the Interim-Final regulations contained adequate criteria for defining URBs. Section 923.13(d) of the Interim-Final Regulation suggested two criteria that could be used to identify URBs: (1) effect on more than one unit of local government (consistent with the ALI Code) and (2) direct and significant impact on coastal waters (consistent with the focus in the Act on coastal waters). In the July 6, 1978 Extension Notice, NOAA indicated it was considering adding two other criteria to identify URBs: (1) public ownership (which would be consistent with the ALI commentary on the Model Land Development Code) and (2) coastal dependency (which would be consistent with the focus in the Act on the interrelationship of land and water).

Several reviewers objected to the addition of these criteria. Some suggested that public ownership was not necessarily synonymous with public benefit; others that the concept of public ownership was too restrictive and that rather, the criterion should be based on whether a use was subject to regulation by a public agency. Some suggested that coastal dependency was too ambiguous; others objected that it was without statutory benefit. One reviewer suggested that URBs be defined as uses which provide income, services or improvements in environmental quality to residents of more than one unit of local government.

NOAA Response: In light of these comments, NOAA has reconsidered and rejected the addition of public ownership and coastal dependency as criteria for identifying uses of regional benefit. NOAA also has rejected regulation by a public agency as a criterion as being too broad. Nor does NOAA feel that defining URBs as uses providing income, services or improvements in environmental quality adds any more clarity or specificity to the guidance contained in the Interim-Final Regulations (now part of the *Comment* contained in § 923.12(b)(1)).

(2) Some reviewers have maintained that States must have the ability to override local regulations in order to be able to meet the requirement of section 306(e)(2) of the Act that local regulations not unreasonably exclude or restrict uses of regional benefit.

NOAA Response: Nothing in the statute or the legislative history indicates that a State override was intended as the sole means for assuring unreasonable local restrictions or exclusions not occur. The Interim-Final Regulations noted at least 4 other techniques that would satisfy this requirement. (See § 923.43(c) of the Interim-Final Regulations.) None of the comments received on these other techniques has dissuaded NOAA that they represent satisfactory responses to the requirements of section 306(e)(2). Accordingly, the requirements of § 923.43 of the Interim-Final Regulations have not been changed (now § 923.12(b)(2) of these regulations).

Readers should note that §§ 923.13 and 923.43 of the Interim-Final Regulations have been consolidated. All requirements pertaining to URBs may be found in § 923.12 of these regulations.

INCORPORATION OF MORE STRINGENT STANDARDS PURSUANT TO THE CLEAN WATER ACT (CWA) AND CLEAN AIR ACT (CAA)

A number of commentators continued to express concern that air and water quality requirements adopted by a State or locality pursuant to the CWA and CAA may be extremely broad and thereby may lead to preclusion of facilities in which there may be a national interest. These concerns have been raised and responded to previously. (See Preamble to Interim-Final Regulations issued March 1, 1978, (43 FR 8378). See also Notice of Extension of Comment Period issued July 6, 1978 (43 FR 29106).)

NOAA Response: To date, NOAA has not been provided with any examples where incorporation into a State's coastal management program of more stringent State or local air or water pollution control standards (adopted pursuant to the CAA or CWA) has led to the preclusion of any facilities in which there may be a national interest.

Moreover, section 307(f) of the Act clearly states that "any requirements established by the CWA or CAA or *by any State or local* government pursuant to such Acts" (emphasis added) shall be the air and water pollution control requirements applicable to a State's coastal management program. Accordingly, § 923.45 of these regulations continues to reflect this provision of the Act.

AMENDMENTS TO APPROVED STATE COASTAL MANAGEMENT PROGRAMS

On December 29, 1978, NOAA issued a proposed rule (*FR*, Vol. 43, No. 251, pages 60949-60954) revising Subpart I of the Interim-Final Regulations. Subpart I defines changes to approved State management programs, procedures for incorporating these changes into a states program, and establishes conditions and procedures by which administrative funding may be terminated for programmatic reasons. The proposed rule was issued to provide additional opportunity for public comments on changes NOAA proposed in response to earlier comments on this particularly controversial subpart of the regulations.

By the close of the comment period on January 29, 1979, NOAA has received comments from 16 states (Alaska, California, Connecticut, Georgia, Louisiana, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Washington), 1 local government (Anchorage, Alaska), 4 Federal agencies (Department of the Army (Corps of Engineers), Department of Energy, Department of the Interior, and Department of the Navy), 6 groups representing energy interests (American Petroleum Institute; Exxon; Mobil, Rose, Schmidt, Dixon, Hasley Whyte and Hardesty; Southern California Gas Company; and Tenneco), and 3 groups representing environmental interests (Friends of the Earth, Natural Resources Defense Council, and Natural Resources Law Institute).

Comments related primarily to the following: (1) the definition of amendments (§ 923.80(c) of the proposed regulations); (2) whether initial state approval of local coastal programs should be treated as amendments (§ 923.80(d) of the proposed regulations), (3) whether changes to approved local programs should be treated as amendments (§ 923.80(d) of the proposed regulations), and (4) whether notice of and opportunity to comment on routine state program implementation should be provided (§ 923.84 of the proposed regulations). A discussion of the comments and NOAA's response follows:

(1) *Definition of Amendments.* A number of comments were received that the definition of amendments (§ 923.80(c)) was too narrow.

(a) A number of reviewers were concerned that the language of § 923.80(c) indicated only changes in policies or authorities related to boundaries, uses subject to management, criteria or procedures for designating areas of particular concern (APCs) or Areas for Preservation or Restoration (APRs), and consideration of the national interest would constitute amendments but that actual boundary changes or deletions of APCs would not constitute amendments.

Relatedly, two reviewers were concerned that if the intent was to cover actual changes, potentially minor boundary alterations would be subject to an unnecessary and burdensome amendment process.

NOAA Response: NOAA did not intend proposed § 923.80(c) to be construed narrowly. The purpose of the amendment provision is to insure that all major program changes are subject to public review before their adoption as part of a State's approved management program. NOAA agrees that the language of proposed § 923.80(c) is ambiguous as to whether actual changes to the above are covered.

Accordingly § 923.80(c) has been rewritten to clarify that amendments are *substantial changes in, or* substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program; (3) Criteria or procedures for designating or *managing* areas of particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

The term "substantial changes in," has been added to assure that major, substantive changes to a management program will be accorded the benefit of a full review. Under this definition, for example, the deletion of a APC, originally included as part of a State's approved management program, would represent a substantial change in the criteria or procedures for managing that APC. Similarly, designation of a new special management area, with new management controls applied as a result of designation, that had not been identified as part of the approved program, would represent an amendment. However, where a State's management program includes procedures for APC designation and what management will occur as a result of designation and these are approved by the Assistant Administrator as part of the State's program, such designations will constitute routine program implementation.

(b) One reviewer maintained that the energy facility planning process (required pursuant to section 305(b)(8) of the Act) should be acknowledged as amendments to approved programs.

NOAA Response: NOAA concurs that the energy facility planning process (§ 923.13) as well as shorefront access and protection planning (§ 923.24), and shoreline erosion/mitigation planning (§ 923.25) (required pursuant to sections 305(b) (7) and (9)), respectfully constitute amendments, because section 306(g) of the Act mandates that they be treated as such. NOAA has not included the planning elements as amendments in the Final Regulations because they already are being processed as amendments under procedures contained in the Interim-Final regulations and therefore will not come up as amendments under the Final Regulations. Any future changes states may make to these planning processes will be treated as amendments if these changes result in any of the substantial changes defined in § 923.80(c). These procedures will apply to program changes initiated after the effective date of these regulations.

(c) Several reviewers suggested that changes in uses of regional benefit (URBs), federal consistency procedures, and APC/APR designations be included in § 923.80(c) as criteria for triggering the amendment process. Other reviewers suggested the addition of items such as changes in the rate of accomplishing program goals and objectives.

NOAA Response: The addition of a special category for uses of regional benefit (URBs) is unnecessary as these represent uses subject to the management program and already are covered by § 923.80(c)(2). As further clarification that URBs are included as uses subject to management, NOAA has added a new paragraph (D) to § 923.82(a)(1)(ii) to indicate that amendments pertaining to uses subject to management will be reviewed to determine that any amendments related thereto continue to identify URBs and method(s) for assuring local regulations do not unreasonably restrict or exclude such uses.

NOAA has not added changes in Federal consistency procedures as program amendments because any substantive changes that would affect consistency determinations already are covered by the items listed in § 923.80(c). In addition, procedures for making consistency determinations are covered by other NOAA regulations (15 CFR Part 930).

The concern about APCs/APRs has been addressed by changing the language in § 923.80(c) to address "substantial changes in" and by adding the word "managing" to § 923.80(c)(3).

NOAA feels a number of items suggested as amendments by reviewers, such as changes in rate of accomplishing program goals and objectives or organizational changes, are addressed more appropriately as part of the continuing review and evaluation of approved State programs, required by section 312 of the Act. Issues related to continuing program review and evaluation will be addressed by NOAA in separate regulations. These will be issued as a proposed rule in the FEDERAL REGISTER in order to assure full opportunity for public review and comment.

(2) *Initial Approval of Local Land Use Programs.* Of the sixteen States that commented on the proposed regulations, fifteen took major exception with proposed § 923.80(d) which would have required local coastal programs developed pursuant to section 306(e)(1)(A) of the Act to be incorporated into a State's management program as amendments.

A number of State reviewers pointed out that, as part of the requirements for approval for a State employing control technique A, the program must contain specific policies, standards and criteria—including those covering local programs—that meet the requirements of § 923.3. Accordingly when the Assistant Administrator approves a State program, he/she is indicating that the program—including policies, standards and criteria governing local program development—are sufficiently complete and specific to indicate that the range of what these local programs will cover is acceptable. In addition § 923.42(c)(4) of the regulations require that States using control technique A include, as part of their approved program procedures, a number of different opportunities for the public and government agencies to be involved in the development of local programs and their approval at the State level. In light of these existing requirements, State reviewers felt treating initial approval of mandated local programs would be duplicative, extremely expensive, time delaying, an extraordinary administrative burden (given the number of local coastal programs that would be subject to the amendment procedure) and counterproductive to implementation of sound and efficient coastal management practices. Most State reviewers recommended that adoption of local coastal programs be treated as routine program implementation.

On the other hand, reviewers representing Federal agencies, the energy industry, and environmental interests supported the treatment of initial local program adoption as amendments.

NOAA Response: NOAA concurs with the analysis of State commentators that there is nothing in the Act that indicates State approval of local programs should be held to different standards than other major program changes, especially in light of the fact that States using control technique A must meet the requirements of § 923.42(c). NOAA also is concerned about the tremendous and unnecessary administrative burden proposed § 923.80(d) could place on State and local governments. NOAA does not agree, however, that local program approval always would constitute routine program implementation.

Incorporation of State approved local management programs should be held to the same standards as any other major program changes (defined in § 923.80(c)). Accordingly, when incorporation of a State approved local program will result in any of the changes defined in § 923.80(c), these will be treated as amendments to State's approved management program. Thus, for example, the process for local program development in Alaska may result in substantial changes in the approved State coastal zone management boundary or in uses of State concern. Where this occurs, such changes will constitute amendments and be processed as such. Where adoption of local programs does not result in the changes described in § 923.80(c), this will constitute routine program implementation, subject to the notice requirements contained in § 923.84(b) (2) and (4).

Accordingly, proposed § 923.80(d)—which dealt with local program incorporation as a separate item—has been deleted since incorporation of local programs now is subject to the requirements of § 923.80(c).

(3) *Subsequent Changes to Local Programs.* A number of commentators objected to the provision in proposed § 923.80(d) which would have exempted subsequent changes to local management programs from the amendment process. These reviewers suggested that changes in local programs potentially could result in major changes into a State's approved program.

NOAA Response: NOAA concurs with these reviewers. Subsequent changes to local programs that result in any of the changes contained in § 923.80(c) will be treated as amendments. Accordingly, § 923.80(d) of the proposed regulations has been deleted.

(4) *Routine Program Implementation.* The majority of reviewers supported the concept of routine program implementation. Some expressed concern regarding the opportunity for comment, particularly as it relates to federal review.

NOAA Response: NOAA appreciates this concern and has added a new § 923.84(b)(2) which requires States to provide notice to the general public and affected parties, including local governments, State agencies and regional offices of Federal agencies, of the proposed routine program implementation action at the same time OCZM is notified. In addition, routine program implementation is subject to serious disagreement on the part of Federal agencies and the mediation provisions of § 923.54. It also should be noted that § 923.82(c)(2)(ii) has been altered to emphasize that all comments will be considered by the Assistant Administrator in making a decision on whether to approve an amendment.

Having considered the comments received and other relevant information, there are adopted below final regulations regarding the development and approval of State coastal management programs.

Dated: March 16, 1979.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

15 CFR is amended by revising Part 923 to read as follows:

Subpart A—General

Sec.
923.1 Purpose.
923.2 Definitions.
923.3 General requirements.

Subpart B—Uses Subject to Management

923.10 General.
923.11 Uses subject to management.
923.12 Uses of regional benefit.
923.13 Energy facility planning process.

Subpart C—Special Management Areas

923.20 General.
923.21 Areas of particular concern.
923.22 Areas for preservation or restoration.
923.23 Other areas of particular concern.
923.24 Shorefront access and protection planning.
923.25 Shoreline erosion/mitigation planning.

Subpart D—Boundaries

923.30 General.
923.31 Inland boundaries.
923.32 Seaward boundaries.
923.33 Excluded lands.
923.34 Interstate boundaries.

Subpart E—Authorities and Organization

923.40 General.
923.41 Identification of authorities.
923.42 State establishment of criteria and standards for local implementation—Technique A.
923.43 Direct State land and water use planning and regulation—Technique B.
923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.
923.45 Air and water pollution control requirements.
923.46 Organizational structure.
923.47 Designated State agency.
923.48 Documentation.

Subpart F—Coordination, Public Involvement and National Interest

923.50 General.
923.51 Federal-State consultation.
923.52 Consideration of the national interest in facilities.
923.53 Federal consistency procedures.
923.54 Mediation.
923.55 Full participation by State and local governments, interested parties, and the general public.
923.56 Plan coordination.
923.57 Continuing consultation.
923.58 Public hearings.

Subpart G—Miscellaneous

923.60 General.
923.61 Segmentation.
923.62 Environmental assessment.

Subpart H—Review/Approval Procedures

923.70 General.
923.71 Recommended format for program submission.
923.72 Review/approval procedures.
923.73 Miscellaneous.
923.74 Preliminary approval.
923.75 Requirements for preliminary approval.
923.76 Preliminary review/approval procedures.

Subpart I—Amendments to and Termination of Approved Management Programs

923.80 General.
923.81 Requests for amendments.
923.82 Amendment review/approval procedures.
923.83 Mediation of amendments.
923.84 Routine program implementation.
923.85 Termination and withdrawal of administrative funding.

Subpart J—Applications for Program Development or Implementation Grants

923.90 General.
923.91 State responsibility.
923.92 Allocation.
923.93 Geographic segments.
923.94 Eligible implementation costs.
923.95 Application for initial program development or implementation grants.
923.96 Applications for subsequent program development grants.
923.97 Applications for subsequent program implementation grants.
923.98 Applications for preliminary approval grants.
923.99 Approval of applications.
923.100 Grant amendments.

AUTHORITY: Secs. 305, 306, 307 and 312, Coastal Zone Management Act of 1972, as amended, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013 (16 U.S.C. 1451 et seq.).

Subpart A—General

§ 923.1 Purpose.

(a) The primary purpose of these regulations is to set forth the requirements for State coastal management program approval by the Assistant Administrator for Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act). Also, included in these regulations are the grant application procedures for program development and program implementation funds (pursuant to sections 305 and 306 of the Act, respectively); and conditions under which grants may be terminated.

(b) Sections 305, 306, and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; Coordination, Public Involvement and National Interest; and, Miscellaneous. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies.

(d) These regulations revise, consolidate, and supersede the following sets of existing regulations and guidance related to management program development and approval:

(1) Interim—Final Program Development and Approval Regulations published March 1, 1978 (15 CFR Part 923) published in the FEDERAL REGISTER on March 1, 1978, dealing with all sections 305 and 306 program development and approval requirements;

(2) Final Coastal Zone Management Program Development Regulations (15 CFR Part 920) published in the FEDERAL REGISTER on April 29, 1977, dealing with section 305 program development, preliminary approval and grant applications;

(3) Proposed Coastal Zone Management Program Approval Regulations Amendments (15 CFR Part 923) published in the FEDERAL REGISTER on December 30, 1976, dealing with subsections 306(c)(2)(B), 306(g), and 312 of the Act having to do with a continuing state-local consultation mechanism, changes to approved management programs, and termination and withdrawal of funding of approved management programs;

(4) Final Coastal Zone Management Program Approval Regulations amendment (15 CFR Part 923) published in the FEDERAL REGISTER on No-

vember 2, 1976, dealing with subsection 306(h) of the Act having to do with island segments;

(5) The "Threshold Papers," informal guidance papers issued by Office of Coastal Zone Management (OCZM) in December 1975, but never published in the FEDERAL REGISTER;

(6) Interim Coastal Zone Management Federal-State Consultation Regulations (15 CFR Part 925) published in the FEDERAL REGISTER on February 2, 1975, dealing with subsections 307 (b) and (h) of the Act which deal with federal consultation, review and approval procedures, and mediation during program development and preliminary approval; and

(7) Final Coastal Zone Management Program Approval Regulations (15 CFR Part 923) published in the FEDERAL REGISTER on January 9, 1975, dealing with section 306 program approval requirements.

(e) Each subpart of the regulations is organized as follows:

(1) An introductory section describing which subsections of the Act are addressed in the subpart;

(2) Relevant statutory citations;

(3) The requirements. Where comments are included among the requirements, they are clearly distinguished by label and type face from the requirements. Comments on individual requirements are included for the purpose of providing a clearer understanding of acceptable or recommended ways to meet the requirement; and

(4) General commentary applicable to all the requirements.

(f) While states must meet the requirements of these regulations, their presentation—either to the Assistant Administrator or to the public—need not be in the order or terminology used herein. (See § 923.71 for further discussion of the program submission format.)

§ 923.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce and his/her designee. With the exception of the mediation functions discussed in § 923.54, all functions of the Act have been vested in the Assistant Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Department of Commerce Organizational Order 25-5A, and from the Administrator to the Assistant Administrator for Coastal Zone Management by NOAA Circular 78-14.

(c) The term "Assistant Administrator" means the Assistant Administrator for Costal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d)(1) The term "relevant Federal agencies" means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;
Department of Defense;
Department of Energy;
Department of Health, Education, and Welfare;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Federal Energy Regulatory Commission;
General Services Administration;
Nuclear Regulatory Commission.

[*Comment:* Should governmental reorganization occur, relevant Federal agencies shall be those with programs, activities, projects or responsibilities in the fields cited above. States should include other Federal agencies as appropriate to their program development or implementation efforts.]

(e) The term "Federal agencies principally affected" shall mean the same as "relevant Federal agencies." The Assistant Administrator may expand upon the term for purposes of reviewing the management program and environmental impact statement.

(f) The term "Coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone. The management program shall include an articulation of enforceable policies and citation of authorities providing this enforceability.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone,

(2) Coastal waters,

(3) Estuary,

(4) Land use.

(i) The term "grant" means a financial assistance instrumment and refers to both grants and cooperative agreements.

§ 923.3 General requirements.

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the State had developed and adopted a management program for its coastal zone * * * which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

Section 302:

The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and develpment of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and aesthetic resoures of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and aesthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet State and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations; (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with State and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(b) Requirements.

The approvability of any state program will be determined by the Assistant Administrator in accordance with the following general requirements:

(1) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area;

(2) The management program must contain three broad classes of policies, consistent with the findings of section 302 of the Act, that are related to resource protection, management of coastal development, and simplification of governmental processes.

[*Comment:* The Act emphasizes that important ecological, cultural, historic, and aesthetic values such as living marine resources, wildlife habitats, public and open space, and nutrient rich areas are being lost or adversely affected by population growth and economic development in the coastal zone. The Act clearly envisions that such activities as population growth and economic development will continue to occur in the coastal zone but in a manner that recognizes the ecological and social values of important coastal resources and prevents or mitigates, to the extent possible, damage to or loss of these resources.]

(i) Within these three broad classes, states must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas.

[*Comment: Resource protection policies* should be directed toward the management and conservation of valuable or vulnerable coastal resources in a state's coastal zone such as wetlands, floodplains, estuaries, intertidal area, beaches and dunes, barrier islands, cliffs and bluffs, other areas subject to erosion or accretion, areas containing fishery spawning and harvesting grounds, other wildlife habitats including those of endangered species, and aesthetic, cultural and historic resources;

(*Coastal development management policies* should address such matters as shorefront access, ports and harbors, energy facilities, coastal dependency of large-scale industrial, commercial, residential and institutional developments, mineral extraction, onshore OCS-related development; and

(*Government process policies* should address such matters as the roles and responsibilities of different levels of government, or clarification and simplification of regulatory and permitting procedures.)

(ii) As part of these three broad classes of policies, the management program must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone. These particular policies shall minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Presidential Executive Order 11990, pertaining to wetlands. These policies also shall reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Presidential Executive Order 11988, pertaining to floodplains.

[*Comment:* In addressing the intent of these Executive Orders, states should develop and incorporate into their management programs policies and procedures for:

(A) determining the effect of a proposed development's location in a wetland or floodplain located within a State's coastal zone boundaries. Factors that should enter into this determination include considerations of public health, safety and welfare; maintenance of natural systems for diverse ecological and conservation purposes; and other uses in the public interest including recreation, scientific and cultural uses;

(B) identifying and evaluating practicable alternatives to location of a proposed project, including alternative sites (including inland sites) or alternative actions (including no action), which could accomplish the purpose of the project but minimize harm to the floodplain or wetland; and

(C) mitigating the effect of locating a proposed project in a floodplain or wetland if there is no practicable alternative.]

(3) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

[*Comment:* States may include, as part of their management program, enhancement policies which provide guidance or preferences regarding certain activities but which are not legally binding. Where unenforceable policies are included in a management program, states should be aware that:

(A) the Assistant Administrator shall judge the adequacy of a state's authorities to carry out its program only on the enforceable policies of a state's management program, and

(B) enhancement policies are binding for consistency purposes, pursuant to section 307 of the Act, only to the extent binding on the state and its agencies.]

(4) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

§ 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsections 305(b)(2)—Uses Subject to Management, 305(b)(8)—Energy Facility Planning, and 306(e)(2)—Uses of Regional Benefit.

§ 923.11 Uses Subject to Management.

(a) Statutory Citation, Subsection 305(b)(2):

The management program for each coastal state shall include * * * A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.

(b) *Requirements.*

(1) States must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters.

[*Comment.* In determining if uses and their management are sufficiently comprehensive, the Assistant Administrator will consider whether significant coastal-related issues raised by the public and/or governmental entities during the course of program development or related to the findings and national policies of Sections 302 and 303 of the Act have been addressed.]

(2) The management program must explain how those uses identified in paragraph (b)(1) of this section will be managed. The management program must contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

[*Comment.* To the extent a State's management program policies are generalized, performance standards that will be used to enforce these policies will need to be sufficiently explicit and specific that persons affected by the management program will have a reasonable understanding of what uses would be permitted in which locations of the coastal zone and under what conditions. Further, while performance standards represent an acceptable procedure for managing uses, they do not substitute for the requirement of paragraph (1) to identify uses subject to the management program.]

(c) *General Comments.*

(1) In identifying uses and their appropriate management, States should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone.

(2) States also should consider potential individual and cumulative impacts of uses on coastal waters including, but not limited to the following uses:

(i) Residential and commercial developments such as subdivisions, highrise apartments or hotels, trailer parks and second-home developments, and shopping centers;

(ii) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations; liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development;

(iii) Recreational facilities such as beaches, amusement parks, marinas and other boating facilities;

(iv) Public facilities and public works such as schools, hospitals, government buildings, dams and water treatment facilities; and

(v) Transportation facilities such as highways, railroads, airports, ports and harbors.

(3) States should utilize the following types of analyses:

(i) Capability and suitability of resources to support existing or projected uses;

(ii) Environmental impacts on coastal resources;

(iii) Compatability of various uses with adjacent uses or resources;

(iv) Evaluation of inland and other location alternatives;

(v) Water dependency of various uses and other social and economic considerations.

(4) Since management of uses must take into account the full range of considerations called for in Sections 302, 303 and 307(f) of the Act, examination of the following representative factors is suggested:

(i) Air and water quality;

(ii) Historic, cultural and aesthetic resources where coastal development resources is likely to affect these resources;

(iii) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(iv) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

§ 923.12 Uses of regional benefit.

(a) Statutory Citation, Subsection 306(e)(2):

Prior to granting approval, the Secretary shall also find that the program provides- * * * for a method of assuring that local and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(b) *Requirement.*

In order to meet the requirements of subsection 306(e)(2) of the Act, States must:

(1) Identify what constitute uses of regional benefit.

[*Comment.* In determining these uses, States should consider use of the following criteria:

(i) Effect on more than one local unit of government, multicounty or intrastate effect;

(ii) Direct and significant impact on coastal waters. Using these criteria, such uses as electrical utilities, regional waste treatment plants, multi-county garbage disposal sites or landfills, State highways, or multi-county parks and beaches could be identified as uses of regional benefit.

States also have the option, under these criteria, of defining uses of which there may be a national interest in their planning and siting facilities as regional benefit. See § 923.52 which discusses consideration of facilities in which there may be a national interest. This could include ports, highways, energy production and transmission facilities, national seashores, parks and forests, and military bases.]

(2) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[*Comment.* These methods may include:

(i) Statewide siting laws that supersede local regulations when necessary;

(ii) State acquisition authorities for sites as the need arises for identified uses of regional benefit;

(iii) Provision of sites for identified uses of regional benefit in local maps or ordinances provided that the State has the ability to assure that if local maps or ordinances are changed, there still will remain a sufficient number of sites throughout the coastal zone to meet projected needs;

(iv) State criteria defining uses of regional benefit that are required to be considered and incorporated into local implementation programs;

(v) Definition of what constitutes unreasonable restrictions or exclusions and identification of standing and an administrative or judicial mechanism to assure that such unreasonable restrictions or exclusions do not occur.]

§ 923.13 Energy facility planning process.

(a) Statutory Citation Subsection 305(b)(8):

The management program for each coastal state shall include * * * (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process anticipating and managing the impacts from such facilities * * *

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating and managing the impacts from energy facilities in or affecting a State's coastal zone. This process must include the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

[*Comment.* This may be accomplished by:

(1) Pre-identification of likely facilities and their probable or acceptable locations within or significantly affecting the coastal zone as part of the management program;

(2) Provision of sufficient and specified lead time in a permitting or licensing process applying to energy facilities to assure proper consideration of the coastal management program;

(3) A regular reporting requirement for responsible government agencies or non-governmental entities which identifies, within a reasonable future time frame, likely future facilities or sites within or significantly affecting the coastal zone; or

(4) Any other procedure which identifies likely facilities and their potential impacts in a timely manner.]

(i) In determining energy facilities which may significantly affect the coastal zone, States must consider, at a minimum, those facilities listed in subsection 304(5) of the Act.

[*Comment.* States have the option of expanding this list for planning and management purposes to include any related or secondary energy activities, which a State feels may significantly affect its coastal zone.]

(ii) At a minimum, "significantly affect" shall be defined in terms of substantial or potentially substantial changes in coastal zone resources which could be affected by a proposed energy facility. These include changes in land, air, water, mineral, flora, fauna, noise, and objects of historic, cultural, archeological or aesthetic significance.

[*Comment.* States have the option of using a more expansive definition of "significantly affect" which could include any or all of the concepts in the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended). These concepts include the following: (A) Effects which are noteworthy in an overall, cumulative way, considering the impacts of a given energy facility and related facilities, either existing or contemplated; (B) effects which may be positive, negative or both; (C) effects which may come about or increase in magnitude because of the particular location of an energy facility; and (D) effects which cover a broad range of environmental, social and economic impacts.]

(2) Procedures for assessing the suitability of sites for such facilities. This assessment procedure shall be designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerrns.

[*Comment.* Many of the requirements contained in paragraphs (1) and (2) can be met by completing the work called for in section 923.11.]

(3) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts;

(i) States must identify any conditions that may be attached to State energy facility, planning and siting procedures;

[*Comment.* The actual analysis of particular sites may be accomplished using planning funds authorized under subsection 308(3) of the Act.]

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, anticipating and managing energy facilities or impacts, including licensing or permitting procedures.

(4) Identification of how interested and affected public and private parties will be involved in the planning process.

(i) States must identify the organization and structure and procedure means by which energy facility planning and siting decisions are carried out in the State.

(ii) States must address the respective roles of relevant State agencies and their relationship to the lead agency and to the management program's requirements as well as the respective roles and opportunity for participation by Federal agencies, local governments, other interested and affected public and private parties.

(iii) States must integrate into this planning process the procedures by which the national interest in the planning for and siting of energy facilities, identified pursuant to § 923.52(c) can continue to be considered after program approval.

[*Comment.* See § 923.52(c) regarding requirements for considering the national interest.]

(c) *General Comments.* (1) States are encouraged to develop the elements required in paragraph (b) in consultation and cooperation with other State, local and Federal agencies. General consultation requirements for program development, of which this consultation should be considered a part, are discussed more fully in § 923.51. Depending on the approach taken to energy facilities management, this consultation and coordination should include, but need not be limited, to procedures for:

(i) assessing need/demand projections;

(ii) allocating these needs among coastal and inland locations;

(iii) identifying potential coastal impacts; and

(iv) determining site suitability of alternative locations for particular facilities.

(2) In developing this planning process, States should address several common problems having to do with weak policy and planning linkages and, relatedly, fragmented and overlapping jurisdictions.

(i) Often there is no comprehensive planning process. While one state agency may develop energy plans or policy regarding energy facilities, other state or local agencies may have the responsibility for issuing recessory siting and operating permits. Often these other agencies operate independently of and without regard to state energy or coastal management policies.

(ii) Relatedly, the responsibility for permitting of facilities is diffuse. Often several permits are required from several different agencies at different levels of government.

(iii) Additionally, there frequently are differing permitting processes for different types of energy facilities (e.g., oil and gas facilities as distinct from electric power plants). This may result in a lack of standardized procedures as well as inconsistent application of coastal management policies.

(3) In order to address these problems and to assure the full integration of coastal management considerations with the energy facility planning process, States should consider the following:

(i) Establishment of the designated State coastal management agency as the lead agency in revewing and making decisions related to siting and conditions of development for energy facilities located in or significantly affecting the coastal zone;

(ii) In states where siting authority is vested in an agency other than the coastal management agency, establishment of a formal means to assure the input and consideration of the coastal management agency's views as part of the decision-making process;

(iii) Establishment of a procedure whereby the management program policies are incorporated into locational or developmental decisions (e.g., licenses, permits, zoning approvals).

Subpart C—Special Management Areas

§ 923.20 General.

(a) This subpart deals with areas that are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 305(b)(3)—Geographic Areas of Particular Concern; 305(b)(5)—Guidelines on Priorities of Uses; 305(b)(7)—Shorefront Access and Protection Planning; 305(b)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) Statutory Citations Subsection 305(b)(3):

The management program for each coastal state shall include * * *
(a) an inventory and designation of areas of particular concern within the coastal zone.

Subsection 305(b)(5):

The management program for each coastal state shall include * * *
(b) broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) *Requirements.* (1) Inventory and designate geographic areas that are of particular concern, on a generic (i.e., by type of area, such as all wetlands or port areas) or site-specific basis, or both;

(i) In developing criteria for inventorying and designating areas of particular concern. States shall consider whether the following represent areas of concern requiring special management:

(A) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(B) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(C) Areas of substantial recreational value and/or opportunity;

(D) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(E) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(F) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, and salt water intrusion;

(H) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(ii) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(2) Identify areas by location (if site specific) or category of coastal resources (if generic) in sufficient detail that affected landowners, governmental entities and the public can determine with reasonable certainty if a given area is or is not designated.

[*Comment.* Maps that indicate the location of designated areas or types of areas are encouraged as part of a State's program submission.]

(3) Describe the nature of the concern and the basis on which designations are made in order to: (i) indicate why areas or types of areas have been selected for special management attention, and (ii) provide a basis for appropriate management policies and use guidelines.

(4) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(5) Provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

[*Comment.* These guidelines will serve:
(i) To provide a basis for special management in areas of particular concern;
(ii) To provide a common reference point for resolving conflicts; and
(iii) To articulate further the nature of the interests to be promoted, prohibited or managed as a result of desgination. States may also establish priority use of guidelines that apply throughout the coastal zone and are encouraged to do so, especially as an aid to resolving use conflicts.]

§ 923.22 Areas for preservation or restoration.

(a) Statutory Citation, Subsection 306(c)(9):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values.

(b) *Requirements.* (1) The criteria by which designations will be made must be included in the management program. Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational, ecological, or aesthetic values.

(2) The procedures by which designations will be made must be included in the management program.

§ 923.23 Other areas of particular concern.

(a) States must meet the requirements of § 923.21(b) in order to receive program approval. Beyond this, States have the option of designating specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. Where States exercise this option, they must meet the requirements of paragraph (b) of this section.

(b) *Requirements.* (1) The basis for designation of these additional special management areas must be clearly stated;

(2) A reasonable time frame and procedures must be established for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21(b);

(3) An agency (or agencies) capable of formulating the necessary management policies and techniques must be identified.

(c) States must meet the requirements of § 923.22(b) for having procedures for designating areas for preservation or restoration. Beyond this, States have the option of including procedures for designating areas of particular concern for other than preservation or restoration purposes after program approval. Where States exercise this option, they must meet the requirements of paragraph (d) of this section.

(d) *Requirements.* (1) The criteria by which designations of additional areas of particular concern will be made must be included in the management program; and

(2) The procedures by which such designations will be made must be included in the management program.

§ 923.24 Shorefront access and protection planning.

(a) Statutory Citation, Subsection 305(b)(7):

The management program for each coastal shall include * * * (a) a definition of the term "beach" and a planning process for the protection to, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

[*Comment.* In meeting this requirement, States should:

(i) Make use of the analyses developed to meet the requirements of § 923.21 as well as information contained in State Outdoor Comprehensive Recreations Plans;

(ii) Consider the need and priority for the protection of islands if they are not already designated as areas of particular concern or areas for preservation or restoration pursuant to §§ 923.21 and 923.22. This analysis will be useful in establishing eligibility for such funds as may be available for islands acquisition pursuant to subsection 315(2) of the Act;

(iii) Analyze the supply of existing public facilities and areas, the anticipated demand for future use of these facilities, the capability and suitability of existing areas to support increased access, and governmental and public preferences and priorities;

(iv) Consider both provision of increased physical and visual access. Emphasis should be on the provision of increased physical access. Physical access could include, but need not be limited to, footpaths, bikepaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. Visual access could involve, but need not be limited to viewpoints, setback lines, building height restrictions, and light requirements;

(v) Give special attention to recreational needs of urban residents;

(vi) Define public coastal areas broadly to include, but not necessarily be limited to: public recreation areas, scenic natural areas, threatened or endangered floral or faunal habitat, wetlands, barrier islands, bluffs, historic, cultural or archaeological artifacts, and urban waterfronts; and

(vii) Consider, in determining protection needs, such factors as (A) environmental, esthetic or ecological preservation (including protection from over-use and mitigation of erosion or natural hazards), (B) protection for public use benefits (including recreational, historic or cultural uses), (C) preservation of islands, and (D) such other protection as may be necessary to insure the maintenance of environmemtal, recreational, historic, esthetic, ecological or cultural values of existing public shorefront attractions.]

(2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

[*Comment.* The purpose of defining the term "beach" is to aid in the identification of those existing public beach areas requiring further access and/or protection as a part of the State's management program. For planning purposes, States may define "beach" in terms of characteristic physical elements (e.g., submerged lands, tidelands, foreshore, dry sand area, line of vegetation, dunes) or in terms of public characteristics (e.g., local, State or Federal ownership, or other demonstrated public interest such as easements, leases, licenses, or traditional and habitual usage.]

(3) There must be an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

(a) Statutory Citation, Section 305(b)(9):

The management program for each coastal state shall include * * * A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

[*Comment.* In developing assessment and evaluation techniques, states should consider:

(i) loss of land along the shoreline or estuarine banks;

(ii) whether the loss resulted from natural or man induced forces;

(iii) whether the erosion is regularly occurring, cyclical, or a one time event;

(iv) impacts of the erosion on adjacent shorelines, and land and water uses;

(v) probable impacts of mitigation on adjacent shorelines, land and water uses, littoral drift and other natural processes such as accretion; and

(vi) probable impacts of re-establishment of pre-erosion shoreline or rebuilding on wetlands and natural habitat, particularly as the re-establishment or rebuilding might relate to the Executive Orders on Wetlands and Floodplains (see § 923.3(b)(2)(ii)).]

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary.

[*Comment.* In developing a process to manage the effects of erosion, States should consider:

(i) the extent and location of erosion problems;

(ii) the necessity for control versus noncontrol of erosion;

(iii) whether structural (e.g., groins) or nonstructural controls (e.g., land use setbacks) are appropriate;

(iv) costs of alternative solutions (including operation and maintenance costs); and

(v) the National Flood Insurance Program (24 CFR 1909 et seq.) and regulations of the Federal Insurance Administration on flood-related erosion-prone areas (24 CFR 910.5).]

[*Comment.* Due to restrictions on the use of section 306 funds (see § 923.94), not all means of restoration proposed by States may be eligible for funding under section 306 or other sections of the Act. Accordingly, particular attention should be given to coordination of shoreline erosion management objectives with funding programs pursuant to the U.S. Army Corps of Engineers Beach Erosion Control Program (33 U.S.C. 426 et seq.), the Hurricane Protection Program (33 U.S.C. 701 et seq.) and other programs as may be appropriate.]

Subpart D—Boundaries

§ 923.30 General.

(a) This subpart deals in full with subsection 305(b)(1) of the Act—Boundaries of the Coastal Zone.

(b) There are four elements to a State's boundary: The inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundaries are discussed in the sections of this subpart that follow.

(c) Statutory Citations, Subsection 305(b)(1):

The management program for each coastal state shall include * * * (1) An identification of the boundaries of the coastal zone subject to the management program.

Subsection 304(1):

The term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

Subsection 304(2):

The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, estuary-type areas such as bays, shallows and marshes, and (B) in other areas, those waters adjacent to shorelines which contain a measurable quantity or percentage of seawater, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

§ 923.31 Inland boundaries.

(a) *Requirements.* The inland boundary of a State's coastal management area must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, pursuant to § 923.11 of these regulations;

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—Waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

[*Comment.* Because there are a number of different floodplains and methods of determining floodplains, no single definition is appropriate for all coastal states. Accordingly, it is left to the states to determine which concept of floodplain should be utilized for the purposes of this section, although use of the 100 year coastal floodplain is recommended.]

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

[*Comment.* The program submission should contain maps, charts or other graphics appropriate to understanding the provisions and geographic scope of the management program.]

(b) Beyond those areas required by paragraph (a) of this section above States have the option of including the following within the coastal zone boundaries:

(1) Watersheds—A State may determine some uses within entire watersheds have direct and significant impact on coastal waters. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters.

(3) Indian lands not held in trust by the Federal Government.

[*Comment.* Because such lands often are interspersed with trust lands (which must be excluded from the management area), it may be difficult to develop a discrete management program for non-trust lands alone. Moreover, in some cases, because of long-standing jurisdictional disputes, it often may be difficult to determine which lands are trust lands and which are non-trust lands. Accordingly, States have the option of including or excluding non-trust lands from the management program. See § 923.33(b) regarding tribal participation in coastal management.]

(c) *General Comments.* Urban areas: In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Seaward boundaries.

(a) *Requirements.*

(1) For States adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent States. For all other States participating in the program, the seaward boundary is the outer limit of the United States territorial sea.

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas.

[*Comment.* Examples of areas that could require more precise delineation include areas where a State specifically allows or, conversely, conditions construction of a monobuoy; designates marine sanctuaries, protected resource habitats or preserves; reserves corridors for pipelines; or reserves areas for siting of offshore islands or other structures.]

Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) *General Comments.* The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

§ 923.33 Excluded lands.

(a) *Requirement.* States must esclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, States must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) *Indian lands.* Tribal participation in coastal management efforts may be supported and encouraged through a State's program provided that:

(1) tribal lands are not held in trust by the Federal Government or otherwise excluded from the coastal zone; and

(2) such efforts are compatible with a State's coastal management policies and are in furtherance of the national policies of Section 303 of the Act.

[*Comment.* See § 923.92(b)(4) for further guidance on tribal participation in coastal management activities.]

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program. Therefore, States should consider mapping the following types of excluded Federal lands:

(i) Large-scale holdings (of 100 or more acres), especially those on which

Federal activities may have spillover effects;

(ii) Lands near special management areas; and,

(iii) Lands that may be declared surplus or excess in the near future, especially those for which the State has reuse priorities or policies.

(2) In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundaries.

Requirement. States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of adjacent inland and lateral seaward boundaries.

[*Comment.* While it is not required that boundaries of contiguous States be coterminous, the purpose of consultation and coordination should be to ensure compatible management of a common resource and to minimize the possibility of incompatible uses occurring at the juncture of States' boundaries.]

Subpart E—Authorities and Organization

§ 923.40 General.

(a) The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified according to the previous subparts. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the State agency designated pursuant to section 306(c)(5) of the Act, other State agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(e)(1) of the Act. The requirements related to section 306(e)(2) are described in §§ 923.42-923.44 of this Subchapter.

(c) In determining the adequacy of the authorities and organization of a State's program, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(g) of the Act, which provides:

In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(4)—Means of Control; 306(c)(7)—Authorities; 306(d)(1)—Control Development and Resolve Conflicts; 306(d)(2)—Powers of Acquisition; 306(e)(1)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organizational requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(6)—Organizational Structure; 306(c)(5)—Designated State Agency; and 306(c)(6)—Organization.

§ 923.41 Identification of authorities.

(a) Statutory Citations, Subsection 305(b)(4):

The management program for each coastal state shall include * * * (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

Subsection 306(c)(7):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Subsection 306(d):

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone, in accordance with the management program. Such authority shall include power:

(1) To administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) To acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) *Requirements.* In order to meet the requirements of the preceding subsections of the Act, States must:

(1) Identify relevant constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the State's management program.

[*Comment.* When, in the opinion of the Assistant Administrator, there is serious question as to the enforceability of any of the authorities asserted to be part of the management program, the Assistant Administrator may request the designated State agency to seek an opinion from the State's Attorney General.]

(2) This identification will include the authorities pursuant to sections 306(d) and 306(e) of the Act which require a State have the ability to:

(i) Administer land and water use regulations in conformance with the policies of the management program;

(ii) Control such development as is necessary to ensure compliance with the management program; and

(iii) Resolve conflicts among competing uses:

[*Comment.* Examples of acceptable conflict resolution mechanisms include, but are not limited to, mediation procedures, administrative review, gubernatorial action, or judicial appeal provisions provided that any such mechanisms results in a decision which is binding upon the entities involved.]

(iv) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) Statutory Citation, Subsection 306(e)(1)(A):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) for anyone or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance * * *

(b) Control technique 306(e)(1)(A) of the Act allows for State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. There are 5 principal requirements associated with use of this control technique. They are that:

(1) The State have in place adequate standards and criteria to guide local program development;

(2) During the period while local programs are being developed, the State has sufficient authority to assure compliance with the management program's enforceable policies;

(3) The State can ensure that local coastal programs will be developed pursuant to its standards and criteria;

(4) The State review and approve local coastal programs to assure their conformance to State standards and criteria; and

(5) The State has the ability to assure local compliance with its program once approved.

More detailed and specific requirements for each of these general items are contained in paragraph (c) below.

(c) *Requirements.* (1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the managment program will comply with the program's enforceable policies. The adequacy of these authorities wil be judged on the same basis as specified for direct State controls or case-by-case reviews.

[*Comment.* For a discussion of direct State control requirements, see § 923.42. For a discussion of case-by-case review requirements, see § 923.43.]

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of § 923.42 which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have (A) statutory authority to prepare and adopt a program for a local government, and (B) a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to (A) prepare and adopt a plan, regulations, and ordinances for the local government and (B) enforce such plans, regulations and ordinances;

[*Comment.* The distinction between this approach and the preceding one is that in this case the State both adopts and implements while in the preceding case, the State adopts but the local government implements.]

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(A) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(*1*) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

[*Comment.* Following are some monitoring techniques States may want to use, either singly or in combination. The list is not exhaustive and does limit States to only these techniques:

(i) Periodic reports—monthly reports submitted by each local government listing all building permits issued, variances and exceptions granted, subdivision plats approved, etc. during the preceding month,

(ii) Spot checks by State Agency,

(iii) Procedures for submission of citizen complaints followed by State review of complaint,

(iv) Establishment of citizen "overview" committees, or

(v) Selective review of local decisions.]

[*Comment.* In developing a definition of a pattern of noncompliance, State may want to consider the number of activities improperly managed, the size and type of such activities, their proximity to coastal waters and to special management areas.]

(*2*) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(*i*) Directly enforce the entire local program;

(*ii*) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

[*Comment.* For example, if a subdivision regulation were the only part of a program that was being enforced improperly, State enforcement could be limited to that regulation. In such a case, the State, would need to have the statutory authority to ensure compliance of subdivision applications.]

(*iii*) Seek judicial relief against local government for failure to properly enforce;

(*iv*) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(*v*) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) Statutory Citation, Subsection 306(e)(1)(B):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone: * * * Direct state land and water use planning regulation.

(b) Control technique 306(e)(1)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct State authority. This authority can take the form of:

(1) Comprehensive legislation: A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

[*Comment.* While it is possible that a State will be able to put together into a single piece of legislation all the authorities needed to meet the requirements of this subpart, it is more likely that even a single, major piece of coastal legislation will be supplemented with other State authorities to meet all the authorities requirements. Where this will be the case, States are advised to review the commentary on networking that follows. Also, in cases where a State will be relying primarily—but not exclusively—on a single piece of legislation, it is important to be explicit about those other authorities included in the management program as part of the listing called for in § 923.41.]

(2) Networking: The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3

[*Comment.* Even though each agency is statutorily mandated to carry out its own, often more narrowly focused policies, the effect of networking is to tie the implementation of these individual authorities into a comprehensive and unified framework for managing coastal land and water resources.]

(c) *Requirements.* In order to apply the networking concept, State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorites provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies.

[*Comment.* These instruments will be most effective if they contain the following:

(A) A description of how the networked agency, in implementing or enforcing its particular authorities, will operate those authorities in conformance with the management program's policies;

(B) A description of procedures to be followed to resolve conflicts between agency activities and management program policies or conflicts between agencies regarding what constitutes conformance with the policies;

(C) A description of the enforcement mechanism that will be used to assure implementation of and adherence to the program's enforceable policies.]

(3) A gubernatorial executive order will be an acceptable instrument to meet the requrements of paragraph (2) above in those States where networked State agency heads are directly responsible to the Governor.

(4) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

[*Comment.* Examples explaining this paragraph follow: Assuming State X has established as a management program policy that only specified types of development henceforth will be permitted on barrier islands. Assume further that such a policy statement is contained in State legislation that proclaims such policy to be effective immediately and directs all State agencies to revise their existing operating procedures (including rules and regulations) within a certain time period to conform with the policy. In this case, the policy is enforceable at time of management program approval and the revision of associated rules and regulations could occur after program approval. Now, however, assume the same policy is part of the management program but the corresponding State legislation states the policy becomes effective when State regulations have been revised to reflect this policy mandate. In this example, rule revision would be necessary prior to program approval.]

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) Statutory Citation; Subsection 306(e)(1)(C):

Prior to granting approval, the Secretary shall find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program.

This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) *Requirements.* To use this control technique States must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identifed plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

[*Comment.* The public notice required by this paragraph should by provided in those communities most likely to be affected by the proposal. Such public notice should provide information on the nature of the proposal (such as size, location, type, etc.), where further information is available, and notice of hearing dates, if any.]

§ 923.45. Air and water pollution control requirements.

(a) Statutory Citation, Subsection 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Act as amended, or the Clean Air Act as amended, or (2) established by the Federal Government or any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General Comments.* (1) Incorporation of the air and water quality requirements pursuant to the Clean Water Act, as amended (CWA) and Clean Air Act (CAA), as amended, should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

(2) Following is a table of the most important Clean Air Act requirements. These requirements are categorized as either uniform, nationwide requirements or non-uniform requirements applicable to a specific State or local area. The first cateogry of requirements is established in the Clean Air Act or by the Environmental Protection Agency (EPA) pursuant to provisions of the CAA, and applies uniformly in all areas of the country. The second category of requirements is based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of a State. The majority of the second category of requirements will be included in the State Implementation Plans (SIPs) required by the Clean Air Act.

TABLE—CLEAN AIR ACT REQUIREMENTS

Uniform, nationwide requirements.	Nonuniform, nationwide requirements (SIPs).
National ambient air quality standards.	New source review.
Motor vehicle emission standards (except where States have been granted a waiver by EPA).	Emissions or air quality standards more stringent than Federal standards.
New source performance standards.	Prevention of significant deterioration.
National emissions standards for hazardous air pollutants.	Attainment and maintenance of national ambient air quality standards.
	Other attainment or maintenance measures such as transportaion control measures.

(3) Water quality standards are established by EPA promulgation or approval of State standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation, EPA itself develops standards on effluent limitations, new source preformance standards, pre-treatment standards and toxic pollutant discharge standards.

(c) *Requirements.* (1) States must incorporate into their program, by reference or otherwise, requirements established pursuant to the Clean Water Act (CWA), as amended, and the Clean Air Act (CAA) as amended.

(2) If more stringent standards are developed; by a State or locality pursuant to the CWA or CAA, and where such standards can be enforced under State authorities, they must be incorporated, by reference or otherwise, into the State's management program.

[*Comment.* If incorporation of more stringent standards leads to the restriction or exclusion of some facilities in which there is a national interest in their siting, such exclusion or restriction is established pursuant to the requirements of the Clean Air Act and Federal Water Pollution Control Act in which there is also a national interest.]

§ 923.46 Organizational structure.

(a) Statutory Citation, Subsection 305(b)(6):

The management program for each coastal state shall include * * * A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

Subsection 306(c)(6):

Prior to grant approval of management program submitted by a coastal state, the Secretary shall find that * * * the State is organized to implement the management program required under paragraph (1) of this subsection.

(b) The main purpose of this requirement is to provide a clear understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities.

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c) (B); 306(c)(7); 306(d) (1) and (2); 306(e) (1) and (2) and 307(f)

[*Comment.* See §§ 923.27, 923.41, 923.42-923.44, 923.12 and 923.45 respectively for further discussion of the authorities contained in these subsections of the Act.]

(2) States must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act.

§ 923.47 Designated State agency.

(a) Statutory Citation, Subsection 306(c)(5):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this section.

(b) *Requirements.* (1) The Governor must designate a single State entity to receive and administer section 306 grants.

(2) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(3) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to OCZM, the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review of State performance required by section 312 of the Act.

(c) *General Comments.* (1) The 306 agency designated is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is however, the focal point for proper administration and evaluation of the State's program and the entity to which OCZM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirements for the single designated agency contained herein need not be viewed as confining or otherwise limiting the role and respon-

sibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in arriving at a designation:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

(a) *Requirements.* Documentation in the form of a transmittal letter signed by the Governor, accompanying the management program submittal, is required to the effect that the Governor:

(1) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(2) Has designated a single State agency to receive and administer implementation grants;

(3) Attests to the fact that the State has the authorities necessary to implement the management program; and

(4) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

§ 923.50 General.

(a) Statutory Citation, Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint, action particularly regarding environmental problems.

(b) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of varying, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and esthetic values and needs for economic development; and

(3) The involvement of the public, of Federal, State and local governments and of regional agencies in the development and implementation of coastal management programs.

(c) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval

(d) This Subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this Subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This Subpart addresses the requirements of the following subsections of the Act: 306(c)(1)—Opportunity for Full Participation; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State—Local Consultation; 306(c)(3)—Public Hearings; 306(c)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: The state has developed and adopted a management program for its coastal zone * * * with the opportunity for full participation by relevant Federal agencies.

Subsection 307(b):

The Secretary shall not approve the management program submitted by a State prusuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(c)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships. In exchange for providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR Part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See Subpart H for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) *Requirements.* In order to address that portion of subsection 306(c)(1) of the Act that deals with Federal agency participation, each State must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(c)(2)(A) of the Act.

[*Comment.* See also section 923.56 for additional plan coordination requirements.]

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) Statutory Citation, Subsection 306(c)(8):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such considerations to any applicable interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during (1) the development of the State's management program, (2) the review and approval of the program by the Assistant Administrator, and (3) the implementation of the program as such facilities are proposed.

(c) *Requirements.* States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

[*Comment.* Table 1 below describes those uses that normally should be considered by states during program development and implementation as having a national interest in the planning for and siting of associated facilities.]

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

[*Comment.* Other sources, which specify the national interest in the planning for and siting of facilities and which may be relied upon for articulation of this interest, include:

(i) Federal legislation, for example the Outer Continental Shelf Lands Act, the Department of Energy Reorganization Act, the Federal Aid Highways Act;

(ii) Policy statements from the President, for example the National Energy Plan; the National Environmental Message, and the National Outdoor Recreation Plan; and the President's Water Policy Message;

(iii) Plans, reports and studies from Federal, State, interstate agencies or from interstate groups, for example interstate energy plans.]

TABLE 1

Uses	Associated facilities	Associated Federal agencies
National defense and aerospace	Military bases and installations; defense manufacturing facilities; aerospace facilities.	Department of Defense, National Aeronautics and Space <Administration.
Energy production and transmission	Oil and gas rigs, storage, distribution and transmission facilities; power plants; deepwater ports; LNG facilities; geothermal facilities; coal mining facilities.	Department of Energy, Department of the Interior, Department of Commerce, National Oceanic and Atmospheric Administration, Department of Transportation, Corps of Engineers, Federal Energy Regulatory Commission, and Nuclear Regulatory Commission.
Recreation	National seashores, parks, forests; large and outstanding beaches and recreational <waterfronts.	Department of the Interior, Department of Agriculture, Department of Housing and Urban Development.
Transportation	Interstate highways, railroads; airports; ports; aids to navigation including Coast Guard stations.	Department of Transportation, Department of Commerce, Corps of Engineers.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any interstate energy plans or programs, developed pursuant to section 309 of the Act, which are applicable to or affect a State's coastal zone.

[*Comment.* Consideration of the national interest should enter into such determinations as uses subject to the management program, the type of management afforded these uses, designation of areas of particular concern and areas for preservation and restoration, and the design of the required energy facility planning process.]

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

[*Comment.* A process for adequate consideration of the national interest during program implementation generally will need to involve the utilization of a State administrative process that deals with individual facility siting decisions as these facilities are proposed. Normally this process should be contained in a State permit procedure that deals with the siting of energy, recreation or transportation facilities. Accordingly, States should review their existing permit procedures and, if necessary, modify existing or develop new procedures to assure that the national interest in the planning for and siting of these facilities will be considered as part of the permit process. A process for "adequate consideration of the national interest" can and should include those important state and national resource concerns that will enter into the decisionmaking process. Table 2 below indicates types of resources for which states may want to include special consideration in their permit procedures.]

TABLE 2

Resources	Major related Federal legislation	Associated Federal agencies
Water	Clean Water Act	Environmental Protection Agency, Corps of Engineers.
Air	Clean Air Act	Environmental Protection Agency.
Wetlands	Fish and Wildlife Coordination Act	Corps of Engineers, Environmental Protection Agency, Department of the Interior, Department of Commerce.
Endangered flora and fauna	Endangered Species Act, Marine Mammal Protection Act.	Department of the Interior, Department of Commerce, Marine Mammal Commission.
Flood plains and erosion hazard areas	Flood Insurance Act	Housing & Urban Development, Corps of Engineers, Department of Agriculture.
Barrier islands and beaches	Coastal Zone Management Act	Department of the Interior, Department of Commerce, Corps of Engineers.
Historic and cultural resources	National Historic Preservation Act	Advisory Council on Historic Preservation.
Wildlife refuges and reserves	Pitman-Robinson Act; Dingell-Johnson Act; Land and Water Conservation Fund Act.	Department of the Interior, Department of Commerce, Marine Mammal Commission.
Areas of unique cultural significance	National Historic Preservation Act	Advisory Council on Historic Preservation, Department of the Interior.
Minerals	Mineral Leasing Act, Outer Continental Shelf Lands Act.	Department of the Interior, Department of Energy, Department of Commerce.
Prime agricultural lands	Homestead Act	Department of Agriculture.
Forests	National Forest Management Act	Department of Agriculture, Department of the Interior.
Living marine resources	Fisheries Conservation and Management Act, Marine Mammal Protection Act.	Department of Commerce, Department of the Interior, Marine Mammal Commission.

[*Comment.* As part of the State's procedure during program implementation for considering the national interest in particular facilities, States may request OCZM's assistance in determining the nature of the national interest in a particular facility when a request to site that facility occurs. Under this process, OCZM will solicit from relevant Federal agencies their statement of the national interest in the particular facility under consideration. OCZM will make these statements available to a State in a timely fashion so that these statements are considered under a State's procedure for consideration of the national interest involved in the siting of a particular facility.]

§ 923.53 Federal consistency procedures.

(a) *Requirements.* States shall include in their management program submission, as part of the body of the submission an appendix or an attachment, the procedures they will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following shall be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(c)(5) of the Act or a single other state agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61-930.62 and 930.78).

[*Comment.* For detailed guidance on structuring implementation of the Federal consistency provisions, see 15 CFR Part 930.]

(b) Beyond the minimum requirements contained in (a) above, States have the option of including the following in their management programs:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

(a) Statutory Citation, Subsection 307(h):

In the case of serious disagreement between any Federal agency and a coastal State:

(1) in the development or the initial implementation of a management program under section 305; or

(2) in the administration of a management program approved under section 306; the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(b) The Act provides for the mediation of "serious disagreements" between any Federal agency and a coastal State during the development and implementation of a management program. In certain cases, mediation by the Secretary or his/her designee, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution. This section describes the conditions of and processes for mediation of serious disagreements that may arise during program development or implementation.

(c) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefor. A copy of the request shall be sent to the other party to the disagreement.

(d) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the State agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development or preliminary approval grants) or for program implementation (if a State is receiving section 306 program implementation grants) may notify the secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the ageny with which the requesting agency disagrees and to the Assistant Administrator.

(e) Within 15 days following receipt of a request for mediation, the disagreeing agency shall transmit a written response to the Secretary, the agency requesting mediation and to the Assistant Administrator indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, the basis for refusal must be indicated. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to resolve the basis for refusal and persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. The Secretary will not provide mediation assistance unless all parties to the serious disagreement agree to participate.

(f) In the case of a serious disagreement that occurs during program development, if all parties agree to mediation, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, and the disagreeing Federal and State agencies. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference. Notice also shall be placed in the FEDERAL REGISTER to allow other parties an opportunity to make known to the Secretary in writing their interest in the disagreement.

(g) If the mediation efforts do not resolve the disagreement, the Assistant Administrator shall determine whether inclusion in the management program of the State agency's position in the disgreement affects the Assistant Administrator's ability to approve the State's management program. The Assistant Administrator shall communicate his/her determination in writing, with the reason(s) therefor, the parties to the disagreement.

(h) In the case of a serious disagreement that occurs during program implementation, if the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing. Notice of the hearing also shall be placed in the FEDERAL REGISTER. At the time public notice is provided, the Federal and State agencies shall provide the public convenient access to public data and information related to the serious disagreement. Hearing shall be informal and shall be conducted by the hearing officer with the objective of securing, in a timely fashion, information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly long or repetitious oral presentations may be excluded at the discretion of the hearing officer. In the event of such exclusion, the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies. Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(i) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(j) Mediation shall terminate: (1) At any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

(k) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

§ 923.55 Full participation by state and local governments, interested parties and the general public.

(a) Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: the state has developed and adopted a management program for its coastal zone * * * with the opportunity of full participation by * * * state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private * * *

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(c)(1) of the Act requires that the opportunity for full participation in program development be provided State agencies, local governments, regional commissions and organizations, port authorities, and other interested public or private parties. To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties States must:

(1) Develops and make available general information regarding the program design, its content and its status throughout program development;

[*Comment.* Public information may take many forms:

(i) Brochures and reports made available in places of public congregation such as libraries, government buildings, stores or transit facilities;

(ii) Radio, television and personal presentations;

(iii) Press announcements;

(iv) Public meetings or hearings;

(v) Exhibits;

(vi) Telephone "hot lines;" and

(vii) Films and slide shows.]

(2) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(3) Indicate the nature of major comments received from interested or affected parties, identified in (2) above, and the nature of the State's response to these comments; and

(4) Hold public meetings, workshops, etc., during the course of program development at accessible locations and

convenient times, with reasonable notice and availability of materials.

[*Comment*. States may want to consider establishing advisory committees and/or technical advisory boards comprised of public citizens representing specific interest, local government representatives, and/or State and Federal agency representatives. These committees and boards may serve a number of useful purposes: providing information needed to develop the management program; serving as a conduit and evaluator of public interests and concerns; and determining major program directions.]

[*Comment*. Related requirements concerning plan coordination, continuing consultation after program approval and public hearings may be found in §§ 923.56, 923.57 and 923.58 respectively.]

§ 923.56 Plan coordination.

(a) Statutory Citation, Subsection 306(c)(2)(A):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

The State has: coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency * * *

(b) *Requirements*. States must insure that the contents of their management programs have been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to section 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

[*Comment*. State and areawide clearinghouses, established pursuant to OMB Circular A-95 (revised) may be used as a means of contacting relevant local, areawide or interstate entities provided such entities are recipients of clearinghouse notices.]

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) Statutory Citation, Subsection 306(c)(B):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

The state has * * * established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision unless such local government waives its rights to comment.

(iii) Such management agency, if any such comments are submitted to it, within such 30-day period, by any local government:

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(b) *Requirements*. (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multistate and other State agencies with activities in the coastal zone and the State agency designated pursuant to subsection 306(c)(5) of the Act;

[*Comment*. States may want to consider use of the OMB Circular No. A-95 (revised) Project Notification and Review System as a mechanism for continuing consultation and coordination with affected local governments, areawide, regional, interstate and other State agencies after program approval. States also may want to consider the possibility of establishing or utilizing councils, committees, or task forces with representation from affected local governments, areawide, regional, multi-state and other State agencies as a vehicle for providing continuing consultation and coordination after program approval. Such a council, when it includes local government representation, may be helpful in meeting the requirements below.]

(2) Establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(i) "Management agency" refers to the State agency designated by the Governor pursuant to subsection 306(c)(5) of the Act and to any other State agency responsible for implementing a management program decision;

(ii) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms;

[*Comment*. Examples of what might constitute a major management program decision include, but are not limited to:

(A) A state management agency decision that a certain class of wetlands may not be filled or developed;

(B) A decision prohibiting the development of non-water dependent facilities along certain shoreline areas;

(C) A decision requiring that new development of the shoreline may not interfere with existing public rights of access to the sea and that new developments of a certain magnitude are required to provide public access as part of the development;

(D) A decision to acquire urban shoreland for recreational purposes; or

(E) Designation of coastal historic resources or natural areas as areas for preservation or restoration, when any of these are discretionary, and not legislatively mandated, decisions of a management agency.]

(iii) A State management program decision shall be considered to be in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(iv) "Local government" refers to those defined in section 304(10) of the Act which have some form of zoning authority.

(v) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(vi) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(vii) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(A) Following State agency receipt of a written statement from a local government indicating that it either:

(*1*) Waives its right to comment; or

(*2*) Concurs with the management program decision; or

(*3*) Intends to take action which conflicts or interferes with the management program decision; or

(B) Following a public statement by a local government to the same effect as (A) above; or

(C) Following an action by a local government that conflicts or interferes with the management program decison.

[*Comment.* A waiver of the right to comment or a waiver indicating concurrence may be presumed if the local government fails to submit written comments to the State agency within the 30-day comment period. State management programs should indicate what action the State agency will take in the event a local government pursues a conflicting or interfering action. States are encouraged to develop their responses to conflicting local action within the framework of sections 306(d)(1) and 306(d)(2) of the Act. Section 306(d)(1) of the Act provides, among other things, that the State have the management authority to resolve conflicts among competing uses. Section 306(d)(2) of the Act requires that the management program provide for a method of assuring local land and water regulations within the coastal zone do not unreasonably restrict or exclude uses or regional benefit.]

[*Comment.* OCZM strongly encourages local governments not to effect a waiver by silence as this process causes needless delay in implementing a management program decision.]

(viii) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

[*Comment.* In the event that a local government requests a public hearing and such a request is granted, the State management program may provide or require that the local government requesting such hearing shall provide the required public notice and/or meeting facility.]

§ 923.58 Public hearings.

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

The state has developed and adopted a management program for its coastal zone * * * after notice * * *

Subsection 306(c)(3):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * *

The state has held public hearings in the development of the management program.

Section 311:

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(b) *Requirements.* States shall:

(1) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(2) Provide a minimum of 30 days public notice of hearing dates and locations;

[*Comment.* Announcement of the hearings should be through media designed to inform the public—not merely to provide "technical notice." In addition to any publication of legal notice as required by State law, reasonably informative news releases should be made available to the news media in the affected communities.]

[*Comment.* In many cases, the population of the coastal zone fluctuates significantly with the seasons of the year. Efforts should be made to hold hearings when those populations most likely to be affected are present.]

(3) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings;

(4) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Miscellaneous

§ 923.60 General.

The purposes of this subpart are to provide guidance on meeting the requirements of subsection 306(h) of the Act dealing with segmented management programs and fulfilling the requirements for an environmental impact assessment which all management program submissions, whether for a State's total coastal zone or for a segment, must contain.

§ 923.61 Segmentation.

(a) Statutory Citation, Section 306(h):

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, that the state adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(b) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs already developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion.

(c) A segmented management program shall not be developed solely for the purpose of protecting or controlling a single coastal resource or use.

(d) Segmentation is at the State's option, but requires the approval of the Assistant Administrator.

(e) *Requirements.* If a State intends to adopt its mangement program in two or more segments, it shall advise the Assistant Administrator as early as practicable, stating the reasons for segmenting the program, and requesting the Assistant Administrator's approval. Upon receipt of the Assistant Administrator's approval, the segment submission shall include:

(1) A geographic area on both sides of the coastal land/water interface;

(2) A timetable and budget for the timely completion of the remaining segment(s); and

(3) The management boundary for the entire coastal zone throughout the state as part of the segment submission.

[*Comment.* Where islands within a State's coastal zone form separate and valuable ecological units for which a segment of the managment program may be established with relatively few problems, the Assistant Administrator may waive this requirement.]

(4) Documentation of how the requirements of Subparts A-F are met for the segment.

§ 923.62 Environmental assessment.

(a) *Requirements.* All State management program submissions must contain an environmental assessment at the time of submission of the managment program to OCZM for threshold review. In accordance with the Council on Environmental Quality Regulations (FEDERAL REGISTER Vol. 43, No. 230, November 29, 1978) Sections 1506.5(a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

[*Comment.* The summary should not exceed 10 pages and should be a descriptive statement of the management program and how it will operate. Specific references to the Federal CZMA requirements are not necessary. It is intended that this summary be part of the overall summary section of the Federal Environmental Impact Statement (EIS).]

(2) A brief discussion of the need for the State's participation in the Federal program;

[*Comment.* Since participation under the Federal CZMA is a voluntary process, States should describe briefly the reasons for applying for Federal approval. This may include the importance of Federal funding to the State, the use of Federal consistency as an additional management tool and/or that participation is mandated by State law.]

(3) A succinct description of the environment to be affected by program implementation:

[*Comment.* A description of the affected environment should not exceed 30 pages. Reference to technical documents and data which were produced or used by the State in analyzing the coastal zone may be useful. The importance of this section lies in relating the productivity and vulnerability of the coastal environment with socio-economic importance. Cross-reference should be made to relevant sections of the management program. If following format suggested in § 923.71, reference to "Framework of Program Development" would be appropriate.]

(4) A description and discussion of the major alternatives which were considered by the State in developing the coastal management program;

[*Comment.* A description of alternatives should not exceed fifteen pages and should be limited to the major or controversial alternatives that have been seriously considered and reviewed at some length by the State. Included should be the alternative of no action or non-participation in the Federal program and alternatives which raised substantial public debate as a result of consultation and public participation during program development. Usually these alternatives will relate to management techniques, boundaries and uses subject to management. To the extent these alternatives are discussed in the management program, cross-reference will suffice; environmental impacts of the proposal and the alternatives' comparative focus would be helpful.]

(5) A discussion of the environmental impacts of implementing the program;

[*Comment.* Describing the environmental impacts will vary with each state and will be a function of which type of management system will be used, whether new legislation, policies or permits were promulgated, etc. These impacts should be discussed to the levels of detail commensurate with the detail in the program. This description should not exceed 50 pages. OCZM considers that the direct impacts of the Federal action are those associated with the expenditures of Section 306 funds, the use of the Federal consistency provisions under Section 307, recognition given by the State to the siting of facilities which are in the national interest, and the thrust of a State program in attempting to achieve the national objectives identified in Sections 302 and 303 of the Act. Indirect impacts associated with the State management program, and which the State should address, include socio-economic impacts of land and water use regulations, impacts upon the natural environment and impacts that can be attributable to specific policies or control techniques. See also §§ 1502.16(c)-(h) of the CEQ regulations.]

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

[*Comment.* The views of local governments, State and Federal agencies, industrial and environmental groups, etc. to their perspective on the impacts of program implementation is desirable. This normally will occur as part of the program development process. Cross-reference to the management program is sufficient.]

(b) *General Comments.* OCZM will independently evaluate the State's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedures for the EIS are discussed in § 923.72.

Subpart H—Review/Approval Procedures

§ 923.70 General.

The purpose of this Subpart is to describe the process of State program review and approval following submission of a State's management program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; States should at least anticipate that it normally will take 7 months between the time a State first submits a draft management program to OCZM for threshhold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This Subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval. In addition, this Subpart provides criteria for providing preliminary approval of State coastal management programs pursuant to subsection 305(d) of the Act.

§ 923.71 Recommended format for program submission.

(a) This guidance is provided in response to requests from a number of States for a suggested format. States should note, however, that this format is not mandatory. As long as States address all the sections of the Act and associated requirements of these regulations, the presentation may be in such format as best suits their needs provided that such format has been discussed with and agreed to by OCZM.

(b) States should include an index with their program submission that indicates where in the management program document the information can be found which is necessary to make the findings required by the Act and associated requirements of these regulations. A chart is provided below of the findings required by the Act and associated requirements of these regulations. This chart should assist States in developing the index. If States use the chart below as an index, it is recommended that a third column entitled Page Number be added to expedite review.

TABLE 2.—*Chart—Findings Necessary for Section 306 Approval*

Section of the Act	Associated section(s) of these regulations
Sec. 306(a) which includes the requirements of sec. 305:	
305(b)(1): Boundaries	923.31-923.34.
305(b)(2): Uses subject to management	923.11.
305(b)(3): Areas of particular concern	923.21-923.23.
305(b)(4): Means of control	923.41.
305(b)(5): Guidelines on priorities of uses	923.21.
305(b)(6): Organizational structure	923.46.
305(b)(7): Shorefront planning process	923.24.
305(b)(8): Energy facility planning process	923.13.
305(b)(9): Erosion planning process	923.25.
Sec. 306(c) which includes:	
306(c)(1): Notice: full participation; consistent with sec. 303	923.3, 923.51, 923.55, and 923.58.
306(c)(2)(A): Plan coordination	923.56.
306(c)(2)(B): Continuing consultation mechanisms	923.57.
306(c)(3): Public hearings	923.58.
306(c)(4): Gubernatorial review and approval	923.48.
306(c)(5): Designation of recipient agency	923.47.
306(c)(6): Organization	923.46.
306(c)(7): Authorities	923.41.
306(c)(8): Adequate consideration of national interest	923.52.
306(c)(9): Areas for preservation/restoration	923.22.
Sec. 306(d) which includes:	
306(d)(1): Administer regulations, control development; resolve conflicts	923.41.
306(d)(2): Powers of acquisition, if necessary	923.41.
Sec. 306(e) which includes:	
306(e)(1): Technique of control	923.42-923.44.
306(e)(2): Uses of regional benefit	923.12.
Sec. 306(h): Segments	923.61.
Sec. 307 which includes:	
307(b): Adequate consideration of Federal agency views	923.51.
307(f): Incorporation of air and water quality requirements	923.45.
Applicable only to segmented management programs	

(c) OCZM recommends the following format for program submission: Summary; Framework of Program Development; Policies; 306 Requirements. OCZM also recommends the following items as appendices: Documentation of Government Consultation and Public Participation Efforts; Summaries of Required Public Hearings; Text of Relevant Legal Authorities; Environmental Assessment; and such other technical reports, maps, organizational charts or other materials a State feels would be useful in reviewing the management program. The elements of the main body of the managment program are discussed in greater detail below:

(1) Summary—This section should serve as an executive summary of the program and should describe briefly the major elements of the State's management program. This section also should include a discussion of objectives the State will seek to attain through implementation of its management program. Specific milestones and timeframes for accomplishment of these objectives should be established where possible.

(2) Framework of Program Development—This section should address the major coastal issues and problems identified during the program development process, the nature of those issues and problems, and how the management program can help to resolve them. This section should include a discussion of the major coastal natural resources and human activities which are important, unique and/or subject to intense pressures or conflicts. A brief discussion of the institutional setting within which the program was developed and some of the major considerations or alternatives that led to particular management approaches is appropriate as part of this section. In addition, there should be a brief discussion of those issues and problems which the program may not address initially but which will be taken into consideration during program implementation and/or future program refinements.

(3) Policies—This section should contain those policies that provide for a comprehensive, enforceable and predictable management program. These policies should be tied to issues and problems (discussed in (2) above) and to legal authorities (discussed in (4) below).

(4) 306 Requirements—In this section States should demonstrate that the requirements of the Act and these regulations have been met. The following contents are suggested:

(i) Boundaries—The requirements of subsection 305(b)(1) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered. General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) Uses Subject to Management—The requirements of subsections 305(b)(2), 305(b)(8) and 306(e)(2) of the Act and related sections 923.11–923.13 of these regulations should be addressed.

(iii) Special Management Areas—The requirements of subsections 305(b)(3), 305(b)(5), 305(b)(7), 305(b)(9), and 306(c)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps locating designated Areas of Particular Concern.

(iv) Authorities and Organization—The requirements of subsections 305(b)(4), 305(b)(6), 306(c)(5), 306(c)(7), 306(d), 306(e)(1) and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: State legislation, State agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organizational structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the State agency designated pursuant to subsection 306(c)(5) of the Act and of other

State, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated State agency to these other agencies also should be described.

(v) Consultation, Participation and National Interests—The requirements of subsections 306(c)(1)-(c)(3), 306(c)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and State agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest considerations; what procedures the State will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) Miscellaneous—Normally, States will address the requirements of subsection 306(c)(4) and related § 923.48 in the gubernatorial transmittal that will accompany the program submission.

(d) For a segment submission, the same format should be used. All the requirements of the Act and these regulations apply, unless otherwise noted in § 923.61. Segment submissions also must address the requirements of subsection 306(h) of the Act and the associated requirements of § 923.61.

§ 923.72 Review/approval procedures.

(a) Upon submission by a State of its draft management program, OCZM is to determine if it adequately meets the requirements of the Act and these regulations. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCZM will prepare a Draft Environmental Impact Statement (DEIS). The DEIS will incorporate the State's program document. This combined document, hereinafter referred to as the DEIS, will be distributed to principally affected Federal agencies, State, local and regional agencies, national interest groups and to interested individuals. Preparation of the DEIS, printing of the document, delivery to EPA, and publication in the FEDERAL REGISTER of notice of availability of the DEIS and notice of date and location of public hearing on the DEIS usually will take 45 days. Since States normally will be responsible for printing the DEIS, the time involved will vary depending on State printing capabilities.

(b) From the time of notice of availability in the FEDERAL REGISTER of the DEIS, each Federal agency, other person or entity normally has 45 days, pursuant to CEQ regulations to provide comments, if any, on the DEIS to the Assistant Administrator. During this time period, a public hearing will be held in one or more locations in the coastal State whose program is under review. At least fifteen (15) days notice, pursuant to CEQ regulations and the Administrative Procedures Act, will be provided, including announcement of availability of the DEIS. Following the public hearing(s), the comment period normally will remain open for fifteen days.

(c) Following the close of the DEIS comment period, the Assistant Administrator will review and evaluate comments received, in keeping with the requirement of subsection 307(b) of the Act to adequately consider the views of principally affected Federal agencies, and in keeping with the requirements of the National Environmental Policy Act (NEPA). Preparation of response to comments, revisions to the State's management program (if appropriate), submission of a final program, and preparation and printing of a Final Environmental Impact Statement (FEIS) normally will take a minimum of three months. Factors that will vary this time frame are: the nature of comments received on the DEIS, the nature and extent of revisions necessary to the management program, and State capabilities with respect to printing the FEIS (since States normally also will be responsible for printing the FEIS).

(d) Notice of the availability of the FEIS will be published in the FEDERAL REGISTER. The Assistant Administrator shall send a copy of such statement to each Federal agency or other person or entity which received a copy of the DEIS and to any additional persons who request a copy of the FEIS.

(e) The Assistant Administrator will review and evaluate any comments received during the thirty day review in keeping with the requirements of subsection 307(b) of the Act. The Assistant Administrator shall then approve or disapprove a State's management program. In the event of approval, the Assistant Administrator shall prepare a set of findings with respect to the requirements of the Act. These findings shall be available upon request. Notice of availability of these findings shall be published in the FEDERAL REGISTER. Principally affected Federal agencies will be sent a copy of the findings as a matter of course.

(f) In the event review of comments on the FEIS leads to a decision by the Assistant Administrator not to approve the management program, the Assistant Administrator shall so advise the State in writing, including the reason therefor. Notice of this decision also will be published in the FEDERAL REGISTER.

§ 923.73 Miscellaneous.

The timelines laid out in § 923.72 may be shortened if any of the following occur:

(a) Reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness; or

(b) A draft environmental impact statement has been issued in connection with preliminary approval pursuant to subsection 305(d) of the Act (see § 923.74 et seq.) and a supplementary or final impact statement is all that is necessary for full approval pursuant to subsection 306(a) of the Act; or

(c) In the case of segmented programs only, a determination is made that the proposed segment management program will not significantly affect the environment. In such cases a negative declaration will be prepared. The program submission still shall be sent to principally affected Federal agencies for their review and comment.

§ 923.74 Preliminary approval.

(a) Statutory Citation, Subsection 305(d):

> The Secretary may make a grant annually to any coastal state * * * if a coastal state has a developed management program which (A) is in compliance with the rules and regulations promulgated to carry out subsection (b), but has not been approved by the Secretary under section 306; (B) specifically identified * * * any deficiency in such program which makes it ineligible for approval * * * and has established a reasonable time schedule during which it can remedy any such deficiency; (C) specified the purposes for which the grant will be used; (D) taken or is taking adequate steps to meet any requirement under sections 306 or 307 which involves any Federal official or agency; and (E) complied with any other requirement * * * necessary and appropriate to carry out the purposes of this subsection.

(b) The basic purpose of preliminary approval is to allow a State additional time to implement fully a coastal management program which, in its design and description, meets the requirements of section 306 of the Act. In granting preliminary approval, recognition is given to the need to describe, in a subsection 305(d) work program, those deficiencies precluding section 306 approval, the specifics for remedying those deficiencies, and a timetable within which this is to occur.

(c) Another objective is to provide funding to support initial implementation of selected elements of a State's coastal management program, provided that the overall design and description of the program meets the section 306 requirements. For selected elements to be initially implemented, necessary section 306 legal authorities and administrative capabilities must be in place;

(d) A third objective is to provide a State with additional time to resolve problems, uncovered during DEIS review of a program submitted for section 306 approval, when such problems would preclude full approval.

(e) The following are examples of situations under which States may apply for preliminary approval:

(1) A State may be able to describe the legislative authority it needs in order to meet the requirements under section 306 to have an approvable program, and to draft a bill carrying this out, but not be able to enact same within the time period provided pursuant to subsection 305(c). This could be because the legislature meets only every two years, or because the process is too complicated to accomplish in a matter of months.

(2) A State program may call on local units of government to prepare their own coastal plans in accordance with State guidelines. However, one or more years may be required for these units to carry out their work. Under this example, it should be noted that, depending on the nature of the State-local relationships and existing legal authorities, this activity also can be accomplished as part of a State's subsection 305(c) program development grant or as part of a section 306 program administrative grant.

(3) A State may need to reorganize within the Executive branch before a program can gain approval and funding under section 306.

(4) A State may be encountering problems resolving differences with one or a number of Federal agencies with respect to specific aspects of its coastal management program.

(f) Preliminary approval is not seen as a necessary continuum from section 305 to section 306 status. States may move directly from subsection 305(c) (program development) grants to section 306 (program implementation) grants. Progression from subsection 305(c) status to subsection 305(d) (preliminary approval) status is not automatic, nor is progression from preliminary approval status to section 306 status automatic. Application for preliminary approval requires consultation with the Assistant Administrator to insure that the State meets the eligibility conditions and approval criteria.

(g) Preliminary approval is meant to apply to a fully described coastal management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to this subsection but shall continue to be considered under provisions of section 306 of the Act and related § 923.61 of these regulations.

(h) In order to be eligible for consideration for preliminary approval, a State must be in one of the following situations:

(1) All subsection 305(c) program development grants must have been expended and the State can describe a program that meets the basic approval criteria but there are still aspects of the program which must be instituted before section 306 approval can be given; or

(2) At any time during section 305 program development when a State has elements of its coastal management program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented); or

(3) During the course of section 306 review, problems are uncovered that preclude section 306 approval but do not preclude preliminary approval.

§ 923.75 Requirements for preliminary approval.

(a) *Requirements.* For a State's coastal management program to receive preliminary approval pursuant to subsection 305(d) of the Act, the State must submit a document which:

(1) Describes the overall management program in sufficient detail that the Assistant Administrator can determine the program meets all section 305(b) requirements at the time submitted for preliminary approval and that it will meet all section 306 requirements at the time submitted for final approval;

(2) Identifies deficiencies that prohibit achievement of section 306 program approval, the means and a timetable for remedying these deficiencies.

[*Comment.* States must meet all section 305 provisions and associated regulations. Therefore, an acceptable 305(d) program can be deficient only in its lack of having translated fully described but pending implementing actions into accomplished fact.]

[*Comment.* The schedule for remedying deficiencies should be sufficiently long to be realistic, given the nature and number of deficiencies and the particulars of a State's situation. At the same time it should be sufficiently tight to insure an enhanced and expeditious state effort.]

(3) Specifies the purposes for which the subsection 305(d) grant is to be used.

[*Comment.* See § 923.98(b) regarding eligible section 305(d) grant expenditures.]

(4) Demonstrate that adequate steps have been or are being taken to meet the requirements under 306 or 307 of the Act, which involve Federal agencies. For purposes of this paragraph, the particular sections of 306 and 307 are:

(i) Subsection 306(a)(1)—identification of excluded Federal lands;

(ii) Subsection 306(c)(1)—opportunity for full participation by relevant Federal agencies. This shall include advising Federal agencies (especially at the regional level) of the State's intent to apply for preliminary approval;

(iii) Subsection 306(c)(8)—adequate consideration of the national interest, involved in planning for, and in the siting of, facilities necessary to meet requirements which are other than local in nature;

(iv) Subsection 307 (c) and (d)—development of procedures for implementing the Federal consistency requirements upon full approval of the State's program; and

(v) Subsection 307(h)(1)—participation in mediation procedures, if appropriate.

(5) Demonstrates that the necessary legal authorities and organizational capability for implementation exists at the time of preliminary approval for those elements to be implemented under subsection 305(d).

(6) Includes an Environmental Assessment.

§ 923.76 Preliminary review/approval procedures.

(a) States interested in preliminary approval should consult with the Assistant Administrator well in advance of the point at which they would like to receive such approval. As a general rule, such consultation should begin six months before approval is desired. The purpose of this consultation is to determine:

(1) If the program will be sufficiently developed, designed and described to warrant consideration for preliminary approval at the time desired;

(2) If there are any elements of the State's management program eligible for implementation funding as part of preliminary approval;

(3) The content and detail of the Environmental Assessment (EA) which must accompany the State's preliminary approval submission; and

(4) If an EIS will be necessary prior to granting preliminary approval. If the Assistant Administrator indicates that the program appears to meet the subsection 305(d) approval criteria, and if a determination is that an EIS will not be necessary prior to preliminary approval, States should plan on submitting the subsection 305(d) pro-

gram document, including an EA, two to three months prior to the desired date of approval. If the Assistant Administrator determines an EIS will be necessary prior to granting preliminary approval, States should plan on submitting the program document, including the EA shortly after this determination is made. The EIS procedures discussed in § 923.72 then will be followed. The subsection 305(d) program document should follow the general format recommended by OCZM in § 923.71. In addition, the information required in § 923.75(a) (2) and (3) with respect to describing deficiencies, timetable for remedying, and purposes for which the grant will be used must be included. The application for grant funds and the accompanying work program is separate document that may be submitted in conjunction with or subsequent to submission of the subsection 305(d) program document. The requirements for the grant application are contained in § 923.98.

(b) Upon submission by a State of a subsection 305(d) program document, the Assistant Administrator shall review the document for compliance with the approval criteria contained in § 923.75. If a State meets the approval criteria, the Assistant Administrator may award a subsection 305(d) grant and will issue a set of findings with respect to deficiencies and the timetable for their resolution.

(c) Copies of the subsection 305(d) program document and the Assistant Administrator's finding of deficiencies will be distributed to relevant Federal agencies.

(d) If a State applies for preliminary approval after formal section 306 program review has begun, preliminary approval will be issued at that point in the section 306 review process when the DEIS review reveals problems that preclude full program approval and implementation but do not preclude preliminary approval. States will be required to take into consideration those items raised by DEIS reviews as part of the subsection 305(d) work program.

Subpart I—Amendments to and Termination of Approved Management Programs

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Statutory Citations. Subsection 306(g):

Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c) * * * [N]o grant shall be made under this section to any coastal state after the date of such amendment of modification, until the Secretary approves such amendment or modification.

Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating or managing areas or particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

§ 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) *Requirements.* Amendment requests shall contain the following:

(1) Description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator;

(2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendments:

(i) At least one public hearing must be held on the proposed amendment, pursuant to sections 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

[*Comment.* Where administratively possible, States should endeavor to tie the public hearing(s) on the proposed amendment to existing State hearing procedures, for example, State agency hearings required under State law prior to approval of local coastal programs. Since hearings on amendments to approved management programs are subject to a minimum 30 day notice, States may want to alter or supplement their notice procedures where these presently provide less than 30 days notice.]

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments:

(i) Where OCZM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

[*Comment.* See related discussion in paragraph (c).]

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in (1) above), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed;

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

(c) Requests for amendments should be sumitted to the Assistant Administrator whenever possible prior to final State action to implement a major program.

[*Comment.* Where a program change will be effectuated by State administrative action, such as adoption of State agency rules and regulations, the request for an amendment of the State's approved management program should occur before final State agency action in order that OCZM may coordinate its review period with that occuring at the State level.

Where a program amendment is the result of legislative action OCZM recognizes it will be more difficult to submit amendment requests as a matter of course prior to final State action. Even in these cases, nonetheless, OCZM encourages States to submit amendment requests prior to final legislative action.]

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment request, still will constitute an approvable program.

(i) For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(B) Transitional and intertidal areas;

(C) Salt marshes and wetlands;

(D) Islands;

(E) Beaches; and

(F) Waters under tidal influence.

(ii) For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(A) Identify which uses are subject to the management program (see § 923.10(b)(1)); (B) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of section 302 and 303 of the Act (see § 923.3(b)(1) and (2)); and (C) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval (see § 923.10 (b)(2)).

(D) Identify uses considered by the State to be of regional benefit and a method (or methods) of assuring local regulations do not unreasonably restrict or exclude such uses (see § 23.12(b)).

(iii) Amendments affecting criteria for designating or managing areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(A) Criteria for designations (see § 923.21(b)(1));

(B) Designation of areas on a generic or site-specific basis (see § 923.21(b)(1) and (2));

(C) Description of how the management program addresses and resolves the management concerns for which areas are designated (see § 923.21(b)(3) and (4)); and

(D) Guidelines regarding priority of uses, including uses of lowest priority (see § 923.21(b)(5)).

(iv) For amendments affecting criteria for designating or managing areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values (see § 923.22(b)).

(v) For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(A) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedures (see § 923.52(c)(1));

(B) The sources relied upon for such consideration (see § 923.52(c)(2));

(C) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered (see § 923.52(c)(4)); and

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (sections 306(c)(1) and (c)(3); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(c) of the Act have not been met, the Assistant Administrator shall advise the State in writing of the reasons why the amendment request cannot be considered.

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with repect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the managment program unapprovable, that State may be subject to termination of program approval and withdrawal of administrative funding. (See § 923.85.)

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(c) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(i) Following review of comments on the FEIS, the Assistant Administrator will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the FEDERAL REGISTER. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the FEDERAL REGISTER of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period and after taking into account all comments received, the Assistant Administrator will make a final decision on whether to approve the proposed amendment and issue notice thereof in the FEDERAL REGISER.

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized for serious disagreements during program implementation. (See § 923.54).

§ 923.84 Routine program implementation.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(c), will be considered routine program implementation. Routine implementation is not subject to the amendment procedures contained in § 923.81–923.82. It is subject to mediation provisions of § 923.83.

(b) *Requirements.* (1) States shall notify OCZM of routine program implementation actions in order that OCZM may review the action to ensure it does not constititute an amendment.

(i) States have the option of notifying OCZM of routine implementation on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCZM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (4) below has been provided.

(2) Concurrent with notifying OCZM, States shall provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCZM.

(i) This notice shall:

(A) describe the nature of the routine program implementation;

(B) indicate that the State considers it routine program implementation and has requested OCZM's concurrence in that determination; and

(C) indicate that any comments on whether or not the action does or does no constitute routine program implementation may be submitted to OCZM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCZM shall inform the State whether it concurs that the action constitutes routine program implementation. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCZM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice shall:

(A) indicate the date on which the State received concurrence from OCZM that the action constitutes routine program implementation;

(B) reference the earlier notice (required in paragraph (2) above) for a description of the content of the implementation action; and

(C) indicate if Federal consistency applies as of the date of the notice called for is this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCZM does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81–923.82.

§ 923.85 Termination and withdrawal of administrative funding.

(a) Statutory Citation, Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(b) In addition to the provisions contained in OMB Circular A-102 relating to termination and withdrawal of funding awarded pursuant to a grant award, the Assistant Administrator may recommend to the NOAA Grants Office that section 306 grant funding be terminated and withdrawn if the Assistant Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) The State has been provided notice of intent to terminate and withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence, or justification for program alteration.

(c) Situations which may lead to notice of intent to terminate and withdraw funding include:

(1) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the assistant Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified.

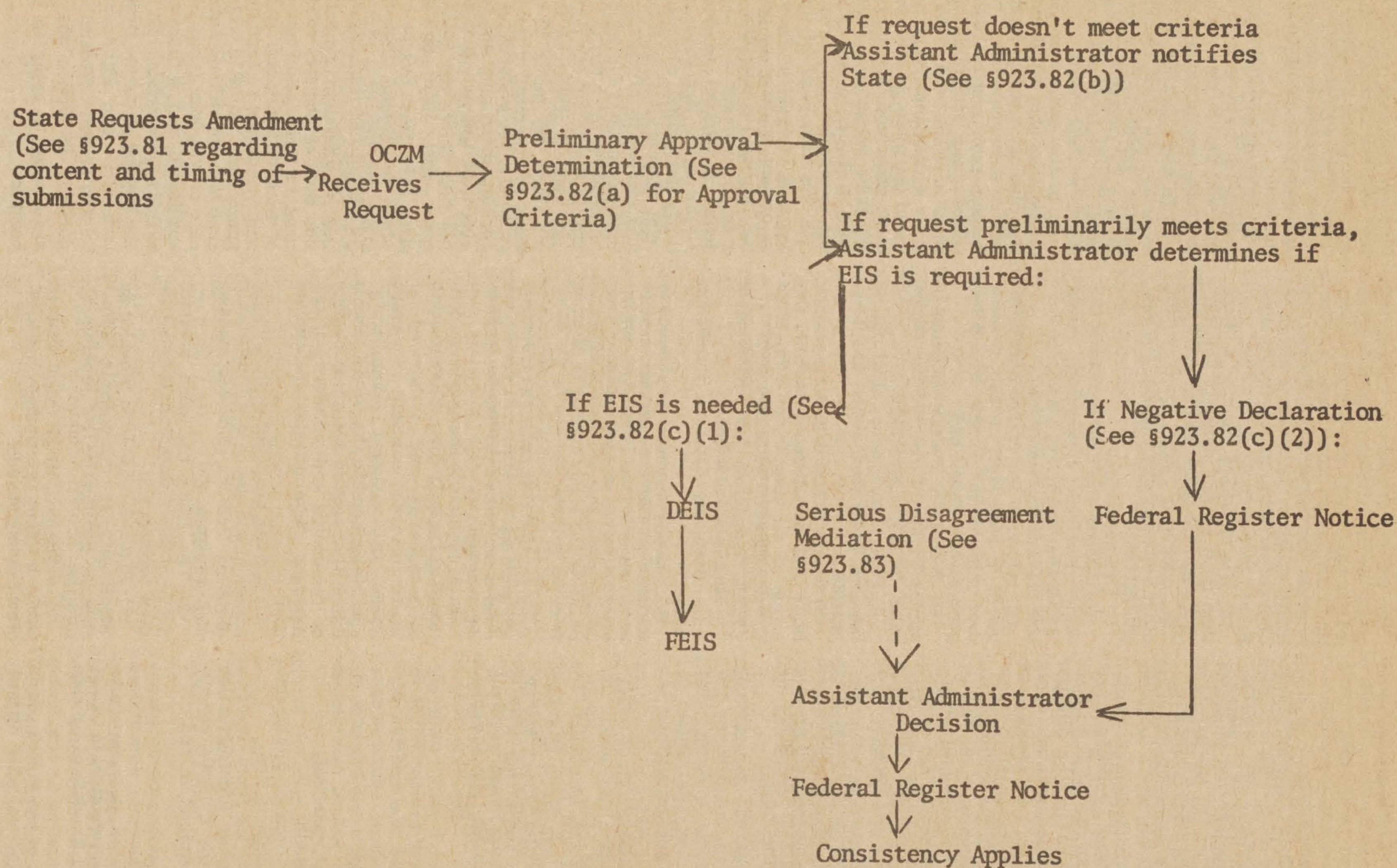
(2) In going through the amendment process, a State acts to implement that amendment prior to approval by the Assisitant Administrator; or

(3) In being notified by OCZM that an action the State considered to be routine program implementation is deemed by OCZM to be an amendment, the State does not submit such action for amendment.

(d) In the event there is cause for terminating and withdrawing section 306 funding, a notice in the form of written documents from the Assistant Administrator and the NOAA Grants Office to the Governor of the State in question or the head of the designated State agency shall be provided advising of the intent to terminate and approve grant and to withdraw any unexpended portions of funding assistance. Included in this notice will be the reasons for the proposed termination and withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence or justification for alteration of its program. Such opportunity to present evidence is referred to in subsection 312(b) of the Act shall consist of a thirty day period, commencing on receipt of notice, within which the State may respond by providing written materials demonstrating adherence to or justification for altering its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration. Such additional time shall not extend beyond a subsequent thirty days from receipt the termination of the first thirty day period. In total then, a State may have a miximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of a State's evidence with respect to adherence or justification for alteration, a final determination shall be made by NOAA with respect to termination and withdrawal of funding assistance. If termination and withdrawal of funding is deemed appropriate, the NOAA Grants Office shall take appropriate Action to terminate or withdraw funds. If funding is terminated and withdrawn pursuant to this section notice shall be placed in the FEDERAL REGISTER. Once funding is terminate and withdrawn pursuant to this section Federal consistency pursuant to section 307 of the Act shall cease to apply to that State's program.

CHART

AMENDMENT PROCESS



Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Adminstrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Office of Management and Budget Circular A-102, Administrative Requirements for Grants-in-Aid to State and local governments, and other directives from the NOAA and OCZM grants offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act.

(c) All applications for funding under sections 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the administrative discretion of the Assistant Administrator.

(d) Grants shall not exceed eighty per cent of the annual total cost of the program.

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsections 306(a) or (h) of the Act.

(f) All application and preapplication forms are to be requested from and submitted to:

National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Grants and Loans Operations Staff, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

§ 923.91 State responsibility.

(a) Applications for program grants shall be submitted by the Governor of a participating State or by the head of the State entity designated by the Governor pursuant to subsection 306(c)(5) of the Act.

(b) In the case of section 305 grant, the application shall designate a single State agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(c)(5) of the Act as the single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated State entity is fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Statutory Citations, Subsections 305(g):

With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

Subsection 306(f):

With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, that such allocation shall not relieve the state of the responsibility of ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, of Indian tribes. If the work to result from such allocation(s) contributes to the effective development or implementation of the State's management program:

(1) *Local governments.* Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government.

(2) *Local governments.* Where a State will be relying on direct State controls as provided for in subsection 306(e)(1)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for specified local activities or one-time projects, again subject to adequate State overview, then a proportional amount of administrative grant funds can be allocated to local governments.

(3) *Areawide agencies.* If a State wishes, it may allocate a portion of its administrative grant to an areawide agency, and absent State law to the contrary, preference shall be given to those agencies recognized or designated as areawide comprehensive planning or development agencies under the provisions of the Office of Management and Budget Circular No. A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(4) *Indian Tribes.* In furtherance of the policy enunciated in § 923.33(b)(2), individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

§ 923.93 Geographic segments.

(a) Application procedures for a grant to be awarded pursuant to subsection 306(h) of the Act for a geographic segment of a State's coastal zone are the same as those set forth in this subpart for a grant to administer the approved management program of the entire coastal zone of a State.

(b) When a State has a program for a geographic segment of its coastal zone approved pursuant to subsection 306(h) of the Act, that portion of a State's coastal zone not awarded segment approval will continue to be eligible for section 305 grants until authorization for such funds terminates.

§ 923.94 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes except as described in paragraph (d) below.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to carry out and enforce program policies, authorities and other management techniques. Implementation activities should be related to achieving substantive results in the following 4 major areas, which are derived from the policies and findings of §§ 302 and 303 of the Act:

(1) Protection of significant natural coastal resources, and areas including, as appropriate, wetlands, beaches, dunes, barrier islands, reefs and fisheries.

(2) Management of coastal development to:

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence or saltwater intrusion;

(ii) Provide priorities for water-dependent uses such as ports, fishing facilities and water-dependent energy facilities; and

(iii) Identify environmentally acceptable sites for dredge spoil disposal.

(3) Increase in public access for recreational purposes, including revitalization of urban waterfront and protection and restoration, where possible, of important historic, cultural and aesthetic coastal resources.

(4) Improvement in the predictability and efficiency of governmental decisionmaking especially with respect to permitting.

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to § 306(c)(9) of the Act. Within areas designated for the purpose of restoring or preserving their ecological or conservation values, section 306 funds may be spent for projects involving expendable materials (as for example, seeds to be used as a non-structural erosion control technique or, for another example, materials to restore lighthouses designated as areas for restoration). All costs associated with such projects may not exceed a total of $50,000 per grant, except in the case of a demonstration grant which may be negotiated with and approved by the Assistant Administrator. In addition the following conditions must be met:

(1) The project must be consistent with and fulfill the objectives of a related policy (or policies) in the State's management program;

(2) Basic program administration requirements discussed in paragraph (c) are provided for;

(3) No other sources of funding are readily available; and

(4) An explanation is provided of how the area will be maintained and operated once preserved or restored.

(e) Section 306 funding in support of any of these purposes, except as limited in paragraph (d) above, may be used to fund:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment (subject to the limitations in paragraph (f) below), and

(4) Feasibility studies and preliminary engineering reports. A feasibility study is defined as a document, independent of a particular design solution for a project, which presents an analysis of the economic practicality of the project. A preliminary engineering report is defined as a document which presents both engineering criteria, in sufficient detail to form the basis for the preparation of final design documents and detailed engineering cost estimates. Detailed architectural drawings and engineering specifications are eligible costs if:

(i) They are directly related to preservation and restoration projects discussed in (d) above;

(ii) They are for projects which are not in APC's but are directly related to the State's management program and the State can provide written documentation to OCZM that the other sources of funding have been secured to complete such projects.

(f) Equipment purchases by the grantee of more than one thousand (1,000) dollars per item require NOAA approval prior to purchase. Equipment purchases by sub-awardees may be approved by the grantee. Such purchases may be deemed eligible costs if the State:

(1) Has examined lease, rental or other non-purchase alternatives and purchase represents an equal or lesser cost alternative, and

(2) The equipment is essential to management activities that are anticipated to continue for more than 1 year.

(g) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 308, 309, 310 and 315 of the Act. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCZM. States should consult with OCZM on technical aspects of consolidating requests into a single application.

§ 923.95 Application for initial program development or implementation grants.

(a) The form SF-424, and an Application for Federal Assistance (Non-Construction Programs) constitutes the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. Grants will not be awarded until A-55 requirements have been completed.

(b) States have the option of using a Preapplication for Federal Assistance. If used, the Preapplication must be submitted 120 days prior to the beginning date of the requested grant. The Preapplication shall include documentation, signed by the Governor, designating the State office, agency, or entity to apply for the administer the grant. The SF-424 and Preapplication for Federal Assistance, should be transmitted to the appropriate clearinghouses at the time it is submitted to OCZM.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal grant and the matching share. Allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments. Eligible implementation costs also shall be determined in accordance with § 923.94 of these regulations.

(d) In Part IV—Program Narrative of the Form SF-424, the applicant shall describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description shall include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation. Identify, if any, that portion of the task that will be carried out under contract with private firms or individuals and indicate the estimated cost of such contract(s);

(iii) Indicate the estimated total cost. Also indicate the estimated total person-months if any, allocated to the task from the applicant's staff;

(iv) Indicate the percent estimated to be completed during the grant period.

(4) The sum of all task costs in subparagraph (3) above should equal the total estimated grant project cost.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff who will be assigned to the grant project. Also indicate the number assigned full time and the member assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

§ 923.96 Applications for subsequent program development grants.

(a) Subsequent development grants will follow the procedures set forth in § 923.95. Additionally, the program design discussed in § 923.95(d) shall be updated to:

(1) Describe the anticipated design and content of the management program, including the major issues the program will address, and the policies and management techniques that will be proposed to address these issues;

(2) Describe how the past year's work contributed to the accomplishment of the overall program design and specifically to meeting the requirements for program approval;

(3) Examine and assess the need, if any, to modify the overall program design or the program's goals and objectives or both in view of the above or any emerging opportunities or problems; and

(4) Indicate when the State will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act or for preliminary approval pursuant to subsection 305(d) of the Act.

(b) In evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.97 Applications for subsequent program implementation grants.

(a) Second and subsequent year applications will follow the procedures set forth in § 923.95 except that:

(1) The Governor's document designating the State agency to receive and administer the grant is not required unless there has been an approved change of designation; and

(2) Copies of the approved management program and approved changes are not required.

(b) No award for continued funding pursuant to section 306 will be made until an evaluation of the State's program pursuant to § 312 of the Act has been conducted and findings have been made by the Assistant Administrator.

§ 923.98 Applications for preliminary approval grants.

(a) The primary purposes of preliminary approval grants are to assist a State in insuring ultimate implementation of a fully developed program design and to provide for initial implementation of approved management elements. The purpose of these guidelines is to define the procedures by which grantees apply for and administer grants under the Act.

(b) The following represent allowable subsection 305(d) costs:

(1) Resolving section 306 deficiencies;

(2) Implementing those portions of a State's coastal management program for which sufficient authorities and organizational structures are in place;

(3) Updating coastal management programs if this updating would be an allowable cost after section 306 approval.

(c) The Form SF-424 and the Application for Federal Assistance (Non-Construction Programs), constitutes the formal application. An original and two (2) copies must be submitted at least 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. A grant will not be awarded until A-95 requirements have been completed.

(d) In Part IV, Program Narrative of the Form SF-424, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) a precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approval coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any subawardees that will be allocated responsibility for carrying out all or portions of the tasks, and indicate the estimated cost of the subaward for each allocation, Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total person-months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all task cost in the above paragraph should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

§ 923.99 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Assistant Administrator may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained in this subpart.

§ 923.100 Grant amendments.

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in Attachment K of OMB Circular A-102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with A-95 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

[FR Doc.79-9127 Filed 3-27-79; 8:45 am]

federal register

WEDNESDAY, MARCH 28, 1979

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

■

HEALTH FINANCING RESEARCH AND DEMONSTRATION GRANTS

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

HEALTH FINANCING RESEARCH AND DEMONSTRATION GRANTS

SUMMARY

This Notice supersedes the original Notice published in the FEDERAL REGISTER on April 13, 1978 (43 FR 15594) and;

1. revises the priority areas for grants,
2. changes the original schedule for submittal, review and funding of grant applications from quarterly to semi-annual and
3. clarifies that Section 1115 "Waiver-Only" projects are subject to the same formal review process as are all other grant applications.

AVAILABILITY OF GRANTS

The Office of Policy, Planning and Research (OPPR) of the Health Care Financing Administration (HCFA) has funds for research and demonstrations. Applications for grants may be made by nonprofit or public organizations and institutions (including state agencies responsible for administering the Medicaid Program). Grants may be made for research, planning or conduct of demonstrations, conferences, or data collection activities.

GENERAL POLICY CONSIDERATIONS

The grant activities we fund are intended to assist in the resolution of major health financing policy and program issues and to assist in developing new methods for the administration of HCFA programs. In general we will consider funding projects which:

Develop or demonstrate new financing mechanisms or controls, management or administrative procedures, service delivery concepts or technological innovations designed to improve HCFA programs, or

Develop knowledge about the basic nature of costs and inflation in the health care field or the economic and behavioral relationships between health care financing methods and the activities in the health care sector.

Applicants who have ideas in either of these general areas are encouraged to develop them into complete applications.

There are several areas of interest and concern which are considered as priority. These areas are not exhaustive of our interests.

Applications which fit one of the priority areas will be considered as "solicited." Applications which do not fit one of the areas will be considered if they fit within the two general areas described above. However, there is no guarantee that there will be sufficient funds to make awards in all the topics. These applications will have to compete with one another and across areas.

HCFA PRIORITY AREAS FOR GRANTS

The 17 areas announced in the April 13, 1978 Notice are being consolidated. Two of these priority areas have been eliminated; Clinical Efficacy Studies and Health Education/Consumer Awareness.

The new priority areas are:

—Beneficiary Awareness in Consuming Health Care Services
—Beneficiary Impact and Data Base Development
—Fraud and Abuse
—Health Systems Organization
—Hospital Costs
—Industrial Organization Reimbursement
—Integrated Data Systems
—Long Term Care
—Long Term Care Demonstrations
—Long Term Care Research
—Physician Reimbursement
—Quality and Effectiveness

An explanation of the new priority areas will be published in a brochure which will be available from:

Program Support Office, Office of Policy, Planning, and Research, Health Care Financing Administration, Department of Health, Education, and Welfare, Room 5046 Switzer Building, 330 C Street, Southwest, Washington, D.C. 20201.

This brochure is the basic source for information on the content of the current priority areas for this grants program. As changes are made in these priority areas new editions of the brochure will be prepared and made available.

DURATION OF FUNDING

Grants are awarded for a period of 1 year, and may be continued on a noncompeting basis generally for up to 5 years if originally awarded as a multiple year project. Continuation funding is contingent upon the availability of future year funds, the meeting of project objectives, and the continued relievance of the project to the declared interests of HCFA.

GENERAL CRITERIA FOR FUNDING NEW PROJECTS

The Associate Administrator for Policy, Planning and Research determines which projects will be funded. These decisions are based on the recommendations of technical review panels and on the comments of other Department components and outside individuals or organizations. More specifically, the factors that are considered in arriving at the award decision are:

1. Whether the project addresses an area of declared interest, and the relevance of the anticipated results to HCFR programs or general issues, involving HCFA programs.

2. The adequacy and creativity of the research design and questions, the validity and appropriateness of the methods and data bases(s) proposed, and the experience and competence of the researchers.

3. Whether the knowledge base, project design or methodology is such that the project can be carried out within the times specified.

4. Whether the proposed project methodology is rigorous and consistent with what is generally agreed to be the state of the art.

5. Whether the overall budget, the personnel resources to be used, and the facilities and equipment are appropriate for the project and to the concern of HCFA for that issue.

6. If it is a demonstration project it shows a commitment of the parties necessary to the success of the planned project.

PROJECT REQUIREMENTS

In addition to meeting the general criteria described above the application must meet the following requirements.

1. The project goals and objectives must be clearly stated and be measurable.

2. The research design, including the questions to be addressed, the methods and the data to be used must be explicitly described. The methodology must be well defined and scientifically valid.

3. A demonstration project must include a demonstration design, objectives and proposed analytical and evaluation methods.

4. The relevance of the findings to HCFA policy concerns should be discussed.

5. Tasks and milestones must be clearly described and scheduled.

6. The application must specify the availability of the data to be used. If data are to be collected, the discussion shoud describe the nature of the data sought, the sample design and size, controls (if any) and the problems that might be encountered. Data that are collected under a HCFA grant must be available to anyone the Project Officer designates at any time and only to those individuals or organizations designated by the Project Officer. The applications must assure the confidentiality of data and the protection of the privacy of individuals when the data allow for such identification.

7. The Application should show the qualifications and experience of the personnel and demonstrate how their qualifications make the individuals capable of performing the tasks in the project. The application should also show how the personnel are to be organized in the project; who will be responsible for which portions of the project and what lines of authority will exist.

8. The application should show the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

9. The budget must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results. Applicants should directly share in the costs of the projects (see Application Procedures, 2 *Grant Policies* below).

10. Funds will not be available for construction or remodeling; or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

11. Experiments and demonstration projects must have a proposed evaluation com-

ponent. This must describe data collection and analysis procedures for an evaluation that will assess the degree to which the objectives of the project were met. The evaluation component may, at the discretion of the HCFA, be separately funded. Therefore, the evaluation effort should be separately and distinctly budgeted.

12. Sections 1115 and 222 projects that require waivers must define the services, list the waivers, discuss the implications if such waivers are granted, state the effect on Federal, State and local laws as well as the effect (beneficial or adverse) on beneficiaries enrolled in the project.

13. Plans for utilization of the project's results should be discussed along with the deliverable products and the points in the project schedule when these reports/products will be available.

14. The application must assure the applicant's willingness to comply with the human subjects regualtions by the inclusion of a completed form HEW-596 (Rev. 1975) "Protection of Human Subjects" (45 CFR Part 46).

REVIEW OF THE APPLICATIONS

The review process will consist of two phases. During the first phase applications will be separated into two groups, those that are relevant to the interests of HCFA and those that are not. The criteria used for this decision will be whether the project fits within the language of HCFA's general interest appearing in the first paragraph of "General Policy Considerations" of this Notice. The first group will be screened for completeness and assigned to review panels; the second group will be returned to the applicants. The second phase will consist of the review, ranking and award. The review will be conducted by a panel of not less than three experts (who are not staff members of OPPR).

There will be at least one panel for each area of interest. A OPPR/HCFA Project Officer will coordinate the panel's review but will not vote. This individual will also prepare the panel's recommendation to the Director, Office of Policy, Planning and Research. The panel's recommendations will contain numerical ratings, ranking of acceptable projects and a written assessment of each application.

SECTION 1115 PROJECTS

Under section 1115(a)(1) of the Act, compliance with statutory State Medicaid Plan requirements may be waived to enable a State Medicaid agency to carry out a significant demonstration project which will further the general objectives of the Medicaid program.

To assure that all HCFA decisions on waivers reflect our needs and priorities and so that we can properly analyze the results of such projects, section 1115 applications which only seek waivers of HCFA regulations are reviewed as are other grant applications. The closing, review and award dates established for grant applications will be used as well for section 1115 waiver-only projects unless otherwise stated in a FEDERAL REGISTER Notice.

All requirements of the Social Security Act, the Code of Federal Regulations and other issuances that pertain to the Title XIX categorical program are applicable to a project approved under section 1115, except as specifically waived.

When a State Medicaid agency applies for a section 1115 project special attention should be given to the preparation of the budget. These budgets are substantially more extensive than the budget for other grant applications (see HCFA-PG-11A, Instructions for Completion of Federal Assistance Application, form HCFA-PG-11).

NUMBER AND SIZE OF AWARDS

Awards may range from $25,000 to $1,000,000, in total cost. Most grants will range between $25,000 and $250,000 per year and range from 1 to 5 years. The number of awards in the priority areas will depend on the size of the highest quality/greatest interest applications.

The number and size of awards will depend on the availability of funds and on the need of projects that are continuing from prior years.

AUTHORITIES

The authorities for these grants are:

Social Security Act, Title XI, and Sections 1110 and 1115.
Section 222(a) of the Social Security Amendments of 1972.
Section 402(a) of Social Security Amendments of 1967.
Public Health Act, Section 1526(a), as restricted by Section 1521(b)(3).
Public Health Act, Section 1533(a), as it relates to Section 1533(d).

APPLICATION PROCEDURES

1. *Applications forms.* A standard application form has been developed for the HCFA research and demonstration grant program. Application kits and guidance for the completion of the forms are available from:

Health Care Financing Administration, Project Grants Branch, 4200-C Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201, telephone 202-245-0671.

The application should include, in the project title, the solicited area to which the applicant is responding. The solicited area designation should also be clearly marked on the outside of the package/envelope. If the application is unsolicited (not in response to any of the priority areas) the project title should include the phrase, ". . . an unsolicited grant application" and the package/envelope should indicate the same.

2. *Grant Policies.* The funding of grants is made through a competitive process based on a choice of proposals submitted in response to this notice. All grantees are expected to share directly (not in-kind) in the costs of the projects. This sharing should not be less than 5 percent of the total project cost.

Other policies in terms of grantee responsibilities, awarding and payment procedures, special provisions and assurances may be found in the following documents that are included in the application kit:

Project Grants Policy Handbook, DHEW Publication No. (SRS) 76-04001
45 Code of Federal Regulations, Part 74; Administration of Grants

3. *Closing Dates and Times.* Because of the time required to carry out a complete review and reach decisions on grant application funding while continuing to manage existing grants and contracts, we are changing from a quarterly to a semi-annual schedule. Accordingly, we will regularly process grant applications twice a year with award decisions being announced in January and July.

For fiscal year 1979 the second and last closing date will be Monday, June 4, 1979. For fiscal year 1980 the closing dates are Monday, October 1, 1979 and Monday, April 7, 1980. For all dates the closing time is not later than 3:00 PM Washington, D.C. time.

(Applications which were received in response to the previously announced January 8, 1979 closing are being held for review with applications to be received by June 4, 1979.)

A summary of this schedule is as follows:

Closings	Reviews	Award Decisions
June 4, 1979	July/August	September.
October 1, 1979	November/ December.	January.
April 7, 1980	May/June	July.

Applications received after these cut-off dates will not be considered unless they were sent by Registered, Certified or Express mail 5 working days in advance of the specified dates. The postmark on the package will establish the date the application was mailed. Late applications will be carried over until the next closing date unless the applicant notifies the Project Grants Branch that it is being withdrawn.

Applications received for the second cycle in any fiscal year will be reviewed with the intent of making awards in the fourth quarter of that fiscal year. However, these applications may be held for award in the first quarter of the subsequent fiscal year.

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: March 23, 1979.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

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