

DEPARTMENT OF ENERGY

Programs and Activities Subject to Executive Order 12372 as Implemented by 10 CFR Part 1005

AGENCY: Energy Department.

ACTION: Notice.

SUMMARY: The Department of Energy is announcing those programs and activities subject to intergovernmental coordination in accordance with provisions of Executive Order 12372 as implemented by 10 CFR Part 1005.

EFFECTIVE DATE: This announcement of covered programs and activities shall become effective on September 30, 1983.

FOR FURTHER INFORMATION CONTACT:

Thomas M. Reynolds, Business and Financial Policy Branch (MA-421.2) Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 252-8191.

Mary Ann Masterson, Office of the Assistant General Counsel for Procurement and Incentives (GC-44), Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1526.

SUPPLEMENTARY INFORMATION: The Department of Energy has found the following programs and activities to be subject to Executive Order 12372 as implemented by 10 CFR Part 1005:

Federal Financial Assistance

The following programs as covered when the recipient of such assistance is a governmental entity. (A governmental entity is any state; independent state organization, board or commission; general purpose local government; special purpose local or regional government; non-profit organization established by state law or local ordinance exclusively to provide a governmental service and the substantial portion of the funding for which is federal; State and municipal colleges and universities are considered non-governmental entities.)

Catalog of Federal Domestic Assistance No.	Program
81.041	State Energy Conservation.
81.042	Weatherization Assistance for Low-Income Persons.
81.043	Supplemental State Energy Conservation.
81.050	Energy Extension Service.
81.051	Appropriate Technology Small Grants Programs.
81.052	Energy Conservation for Institutional Buildings.
81.058	Geothermal Loan Guarantees.
81.060	Electric and Hybrid Vehicle Loan Guarantees.
81.074	Alcohol Fuels Loan Guarantees.
	Loan for Geothermal Reservoir Confirmation Projects.
	Loans for Wind Energy Systems and Small Hydroelectric Power Projects.
	Loans for Small Hydroelectric Power Project Feasibility Studies and Related Licensing.
	Wind Energy Technology Application Program.
	Loan Guarantees for Alternative Fuel Demonstration Facilities.

Note.—Those programs without CFDA numbers are currently not funded by appropriations.

Also covered are research, development and demonstration programs and activities when such programs and activities (1) have a unique geographic focus and are directly relevant to the governmental responsibilities of a state or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. These programs include:

81.036	Energy Related Inventions.
81.049	Basic Energy Sciences, High Energy/Nuclear Physics, Fusion Energy, Health and Environmental Research, Program Analysis and Field Operations Management.
81.057	University Coal Research.

State Plans

The State Plans of the following programs are eligible for simplification, consolidation, or substitution in accordance with the provisions of 10 CFR Part 1005.

Catalog of Federal Domestic Assistance No.	Program
81.041	State Energy Conservation.
81.042	Weatherization Assistance for Low-Income Persons.
81.043	Supplemental State Energy Conservation.
81.050	Energy Extension Service.
81.052	Energy Conservation for Institutional Buildings.

Direct Federal Development Programs and Activities

The following direct federal development program and activities are subject to the provisions of 10 CFR Part 1005.

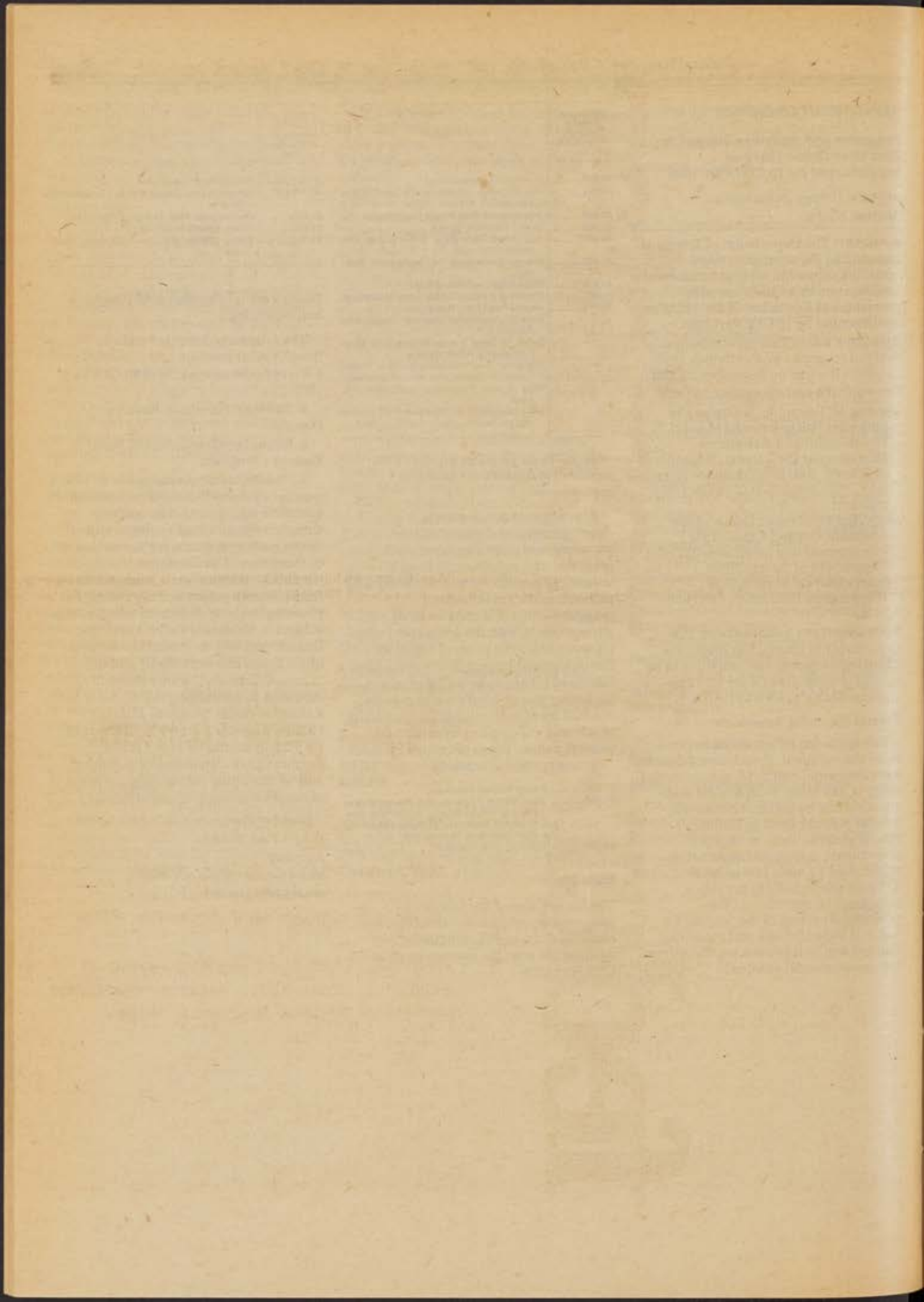
1. Strategic Petroleum Reserve Program.
2. Naval Petroleum and Oil Shale Reserves Program.
3. The Department engages in a number of direct federal development activities which cannot be usefully categorized and listed as direct federal development programs for the purposes of this notice. The Department will rigorously examine each proposed direct federal development activity during the planning cycle to determine whether it is subject to Executive Order 12372. The Department will be guided by the terms of the Executive order itself and the "General Criteria Used by Federal Agencies in Identifying the Scope of the Executive Order" published in the *Federal Register* January 24, 1983, at 48 FR 3125. It should be noted that a number of the Department's activities will be exempted accordingly by virtue of national security considerations.

Issued at Washington, D.C., June 8, 1983

Donald Paul Hodel,
Secretary.

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Federal Register

Friday
June 24, 1983

Part VIII

Department of Health and Human Services

Office of the Secretary

**Intergovernmental Review of the
Department of Health and Human
Services Programs and Activities; Final
Rule and**

**Programs Subject to the Provisions of
Executive Order 12372, Intergovernmental
Review of Federal Programs; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 51c, 52b, 55a, 56, and 122

45 CFR Parts 100, 224, and 1351

Intergovernmental Review of the Department of Health and Human Services Programs and Activities

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to certain federal financial assistance and direct federal development programs and activities of the Department of Health and Human Services. These regulations replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT:

- Regarding the regulations generally and implementation of the state plan simplification, consolidation and substitution provisions of these regulations—Mr. Gordon Boe, Office of the Deputy Under Secretary for Intergovernmental Affairs, (202) 245-6036.

- Regarding implementation of the provisions of these regulations that apply to certain HHS federal financial assistance programs and activities—Mr. Jonathan D. Breul, Office of Procurement, Assistance and Logistics, ASMB, (202) 245-7565.

- Regarding implementation of the provisions of these regulations that would apply to certain HHS direct federal development programs and activities—Mr. Thomas C. Cleary, Office of Facilities and Management Services, ASMB, (202) 245-1597.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1983, (48 FR 4130), the Department, along with 25 other federal agencies, published a Notice of Proposed Rulemaking (NPRM) to carry out Executive Order 12372. Some agencies published notices proposing that programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. On March 2, 1983 the agencies and OMB held a public meeting

to solicit comments on the NPRM. On April 21, 1983 the Department, in conjunction with the other federal agencies and OMB, published a notice in the *Federal Register* reopening the comment period, scheduling another public meeting for May 5, 1983, and requesting comments on several tentative responses to comments. (48 FR 1701)

The Department received numerous comments on government-wide issues during the comment period, including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket. In addition, the Department received comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these written comments as well as testimony at the public meetings and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983. Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM has contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, postponing the effective date of these final regulations until September 30, 1983. (48 FR 15587 April 11, 1983.) The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

- Allows states, after consultation with local officials, to establish their own processes for review and comment on

proposed federal financial assistance and direct federal development;

- Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
- Allows states to simplify, consolidate, or substitute state plans; and,
- Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Four major elements comprise the scheme for implementing the Executive Order. These are the state process, the state process recommendation, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

- A designated official or entity to act as a single point of contact between the state and all federal agencies;
- Delegations of review and comment responsibilities to particular areawide, regional, or local entities;
- Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
- A means of consulting with local officials; and,
- A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Elsewhere in this issue of the Federal Register, HHS has published a list of those programs and activities eligible for selection under the scope of the Order. Any changes in this list will also be published in the Federal Register. After consulting with local elected officials, the state selects which of these HHS programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the state's list are provided directly to HHS.

HHS provides the state process with notice of proposed actions for selected programs and activities. For any proposed federal financial assistance or direct federal development under a selected program or activity, the state has among its options those of: Preparing and transmitting a "state process recommendation" through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; or not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, HHS will provide notice, opportunities for review, and consideration of comments consistent with the provisions of section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

"State Process Recommendation"

A "state process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. A state process recommendation may be a consensus—i.e., the unanimous recommendation of areawide, regional, and local officials or entities—or it may contain a recommendation which resolves

differing views. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation.

A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The term "accommodate or explain" is discussed later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are transmitting to HHS any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. In addition to these responsibilities a state could choose to broaden the single point of contact's role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. However, commenting officials and entities may submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, and will be considered by HHS in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory or regulatory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, HHS will: (1) Accommodate the recommendation by accepting it or reaching a mutually agreeable solution with the parties; or (2) provide the single point of contact with a written explanation of the Department's decision.

If there is nonaccommodation, the Department is generally required to wait 10 days after it explains its decision to

the single point of contact before taking final action.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
100.1	100.1
100.2	100.2
100.3(a)	100.3
100.3(b)	100.7(a)
100.4 [Reserved]	100.4 [Reserved]
100.5(a)	100.6(b)
100.5(b)	100.6(d)
100.5(c)	100.6(c)
100.6(a)	100.8(b)
100.6(b)	100.7(a)
100.6(c)	100.8(a)
100.6(d)	100.8 Deleted
100.6(e)	100.9
100.7(a)	100.10(a)
100.7(b)	100.10(b), (c)
100.8	100.11
100.9	100.12
100.10	100.13

Portions of the final rule not listed in this table (§§ 100.5, 100.6(a), 100.7(b), and 100.8(c) are new.)

Section 100.1 What is the purpose of these regulations?

Change—There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. These statutes are reproduced as an appendix to this preamble.

Comment—Commenters, including state, local, and regional agencies, interest groups and members of Congress, urged that the regulations implementing Executive Order 12372 also provide that federal agencies carry out their responsibilities under these statutes.

Response—As noted above, the Executive Order was amended to cite section 204 as authority as well as section 401. In addition, § 100.1(a) (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Section 100.1(b) adds mention of "areawide" entities in keeping with

section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

Comment—Commenters suggested deleting the language in § 100.1(c) which states that the regulations were not intended to create any right of judicial review.

Response—The rule retains this language. The purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on the one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be contrary to their purpose. However, HHS has statutory responsibilities under the laws on which these rules are based. By retaining § 100.1(c), the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 100.2 What definitions apply to these regulations?

Comment—Commenters did not object to the definitions in the proposed rule. However, some commenters asked that various additional terms be defined including: Environmental impact statement; state plans; direct federal development; federal financial assistance; emergency; unusual circumstances; accommodate; and state process.

Response—The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term except in its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct

federal development," or "federal financial assistance" because we believe that these definitions are unnecessary. Instead, HHS believes that the lists of state plans and program inclusions accompanying this rulemaking provide a comprehensive list of the plans, programs and activities that are subject to the provisions of this rule.

The Department also decided not to define the terms "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and under inclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond their control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus, it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is explained in § 100.10. If the Secretary accepts the state process recommendation or reaches a mutually agreeable solution, the Department has accommodated the concerns expressed in the recommendation. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. As the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not necessary.

Finally, the Department concluded that a definition of the term "state process recommendation" would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 100.3 What programs and activities of the Department are subject to these regulations?

Comment—This section is substantively very similar to § 100.3(a) of the NPRM. A number of commenters contended that it was contrary to the intent of the Order for the Federal

Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by HHS in developing its list of programs and activities that were being proposed for exclusion.

Response—The Order does not cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are covered by the Order. For example, many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities of state and local governments. On the other hand, a purpose of block grant programs is to give funding discretion to state and local governments. There is little point in consultation between state and local governments and HHS regarding funding under block grant programs when the Department has virtually no discretion with respect to grant applications or other decisions.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many national security actions, even those affecting state and local jurisdictions, involve classified information. It would be inappropriate to seek state and local review of such national security matters when access to the plans or documents for the proposed federal action is not possible for national security reasons.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which a state may select. However, in response to comments, the Department has revised the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice elsewhere in this issue of the Federal Register listing these "covered" programs and activities. HHS has no programs to which section 204 of the Demonstration Cities and Metropolitan Development Act currently applies. However, should such programs subsequently be added to this list, the applicability of section 204 will be indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity inclusions or exclusions as these occur.

Section 100.5 What is the Secretary's obligation with respect to federal interagency coordination?

Comment—Some commenters, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other.

Response—The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from section 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal

departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 100.6 What procedures apply to the selection of programs and activities under these regulations?

Comment—Some commenters asked that the states' obligation to consult with local elected officials in the establishment of a state process, and in making program selection choices, be spelled out in the rule.

Response—We have added a new § 100.6(a) in order to make clear that any program or activity published in the Federal Register list prescribed by section 100.3 is eligible for selection for a state process. The section also indicates more explicitly than the NPRM that states are required to consult with local elected officials before selecting programs and activities for coverage. OMB previously wrote the Governors asking each to provide an assurance of local consultation when the state submits its initial list of selected programs and activities. A similar assurance is required by § 100.6(c) when changes are made to the initial selections.

Comment—Several commenters suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes.

Response—The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Section 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Changes—Section 100.7(a) incorporates material from proposed §§ 100.3(b) and 100.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to

communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 may be undertaken by the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Comment—A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for review under a state process.

Response—New § 100.7(b) is intended to respond to these concerns. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the Federal Register or in a publication widely available in the area potentially affected by the proposed federal action), or through actual notification of directly affected entities or officials (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and will identify the Departmental official who should be contacted for more information.

Section 100.8 *How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?*

Comment—The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt that 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes need to be resolved.

Response—In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days. The Secretary points out that noncompeting continuation applications contain only sufficient information to indicate progress in the activities proposed in the original application. Review by the funding agency is primarily to ensure adequate progress in the framework of previously approved budget and program activity, rather than to approve a proposal. Hence, the most useful source of project information to the state ordinarily will not be the continuation application, but other sources in its community. Because of the limited information in noncompeting continuation applications, states may wish to adopt different criteria or a more limited set of criteria to be employed for this type of application.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information may be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the

NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted.

Comment—Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful.

Response—The Department is aware of these concerns, and in the interest of retaining as much flexibility as possible for the state process, we have decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Additional discussion—Section 100.8(b) is derived from § 100.6(a) of the NPRM. This paragraph is intended to make clear that the provisions of this section also apply when the responsibility for review, coordination and communication with the Department is delegated to local officials.

Section 100.6(e) of the NPRM has been deleted. A new § 100.9 of the final rule describes how the Secretary receives and responds to comments.

Section 100.9 *How does the Secretary receive and respond to comments?*

Comment—This new section replaces proposed § 100.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 100.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

Many commenters discussed this "single point of contact" concept. Some commenters wanted to permit multiple points of contact within a state instead of only one. Some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Finally, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the

concerns of local elected officials and regional and areawide entities.

Response—In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, through these regulations, the Department has made substantial changes to this paragraph. The concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in a simple and understandable manner. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That decision is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Section 100.9(a) obligates the Secretary to follow the "accommodate or explain" procedures of § 100.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. The single point of contact may transmit the recommendation to the Department directly or may require the applicant to do so. If these conditions are not met, the Secretary will, nevertheless, consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an

important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should, to the extent of their discretion under law, make greater efforts to accommodate the concerns of state and local elected officials than has sometimes been the case in the past. The Department's reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. Where states and other directly affected parties forge a unified state process recommendation, it is appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. Several commenters said, in connection with the 30-day review period proposed by the NPRM, that it would be difficult to achieve consensus with respect to some projects or programs. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 100.10 to a state process recommendation which does not represent a unanimous recommendation. In such a case, because the single point of contact is required under § 100.9(b)(2) to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Section 100.9(b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends, if they wish to do so. These entities may also choose to send their comments directly to the Department at the same time that they send them to the state process.

Section 100.9 (c) and (d) provide for the Department's response to comments in situations where there is no state process or where programs are not selected for review by a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit

a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department will consider these comments. Section 100.9(d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Section 100.9(e) reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

Comment.—A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Response.—Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe that it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation.

Section 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Comment.—Section 100.10(a) now provides that if a state process recommendation is submitted to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully

consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, § 100.10(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This does not preclude the Department from class informing the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, even if such conversation or communication occurs, the Department will always provide a written explanation of the nonaccommodation to the single point of contact.

Comment.—The NPRM provided that the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days.

Response.—The Department believes that ten days will provide adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state. In addition, the Department believes that to avoid undue delay, a longer period should not be provided.

The Department has included a new § 100.10(c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received the letter. This presumptive date of receipt is five days from the date of the letter, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other contexts.

Comment.—Some commenters indicated what they sought most was federal agency responsiveness to their comments. The commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95.

Response.—In providing explanations of nonaccommodation, the Department will be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and within its statutory authority.

Section 100.11 *What are the Secretary's obligations in interstate situations?*

Comment.—This section is based on proposed § 100.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been deleted because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states do not agree with one another. Some commenters also said that greater attention should be given to the role of the designated areawide entities that represent interstate metropolitan areas.

Response.—The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the interests of all the parties involved for affected states and local elected officials to mutually agree on the Department's programs and projects that affect interstate areas. On a case-by-case basis, as appropriate, the Department will work with these officials in attempting to secure this agreement.

The Department also believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, § 101.11(a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Section 101.11(a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in parts of Maryland,

Virginia and the District of Columbia. If that Council of Governments is delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would "accommodate or explain" that recommendation as well.

Section 100.12 *How may a state simplify, consolidate or substitute federally required state plans?*

This section is unchanged from the NPRM. The Department received a number of comments on this section, however. In general, state elected officials and department directors strongly supported this provision, while state developmental disabilities councils, state and areawide aging agencies, and advocates for children, the handicapped and the aging strongly objected to allowing states to consolidate their plans. The major objections to this section are discussed below, along with the Department's responses.

Comment.—Several commenters were concerned that state plan consolidation will lead to a lack of federal monitoring and a substantial weakening of enforcement of state compliance with statutory and regulatory requirements.

Response.—The Department wants to make it unequivocally clear that it will continue to require states to meet all federal statutory and regulatory planning requirements. The Department will not approve any plan that does not meet these requirements; we will continue to monitor the states to ensure that they implement their programs in compliance with statutory and regulatory requirements. This provision does not permit states to ignore the requirements; it merely allows the States to use their own planning and budgeting processes to design plans that meet those requirements without detailed federal guidance that is not contained in statute or regulations.

Comment.—Several commenters believed that this provision allows states to consolidate programs and shift separate federal categorical program funds among programs, and that this is simply an attempt to permit states to develop block grants by the back door.

Response.—The Department emphasizes that states will not be allowed to consolidate programs or,

except to the extent permitted by law, to shift federal funds from one program to another. This is not an attempt to provide informal block grants. States must continue to meet program statutory and regulatory requirements governing the expenditure of federal funds for targeted groups of eligible people and the administration of categorical programs. This provision simply provides the states a greater opportunity to conduct planning across program lines to ensure the most effective and efficient use of categorical federal funds (e.g., to identify gaps and overlaps in services).

Comment.—A number of commenters questioned the advisability of permitting states to consolidate specific plans (i.e., aging, child welfare services and developmental disabilities) with other plans. They recommended that these plans be excluded from plan consolidation. Their concerns included a fear that the programs would lose visibility, the belief that each program is so unique in its purpose and requirements that federal mandates cannot be met in a consolidated plan, skepticism that the states would in fact save any paperwork by consolidating plans, and the contention that states would not find it useful to consolidate plans.

Response.—The Department's experience in its 10-state Planning Reform Project has demonstrated that: (a) Federal statutory and regulatory planning requirements for these programs can be met in consolidated plans; (b) inclusion in a consolidated plan provides an opportunity for the programs to increase their visibility, because they can demonstrate to the Governor, the legislature and the general public that the services needed by their clients extend beyond the narrow federally-funded categorical program; (c) states were able to save paperwork and reduce federally-imposed administrative burdens (in several cases, states saved over 1,000 pages) simply by eliminating duplicative information and developing their own formats; and (d) the consolidated plans were more understandable and useful to Governors, department directors, legislatures and the general public than the previous categorical plans. The Department recognizes that since the requirements of the programs vary, and since the organizational structures and priorities vary among the states, plan consolidation may not be appropriate in a particular state. For these reasons, we have left plan consolidation at the option of the states. If a state does not

wish to consolidate program plans, it may simplify separate categorical plans.

Comment—One commenter recommended that the Department establish an appeals process under these regulations, to deal with situations in which the Department disapproves modified state plans.

Response—The Department believes that a new appeals process is not necessary, because the states can appeal any disapproval through normal appeal mechanisms. In addition, before the Department makes a final determination to disapprove any plan, it works with the states to resolve problems that impede approval.

Comment—A few commenters recommended that a "single point of contact" be established for the entire federal government to deal with states on the simplification, consolidation or substitution of state plans.

Response—In consultation with the other federal agencies, the Department has concluded that this recommendation should not be adopted, because each federal agency must retain its existing authority and responsibility for approving the state plans required by its programs. However, the Department will designate an official to coordinate the provision of technical assistance to states in this area (review and approval of state plans will continue to reside with the affected HHS program officials, however). In addition, the federal agencies that require state plans will establish an interagency steering group, which will meet regularly to discuss state plan issues. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases where states consolidate plans across federal agency lines. This coordination will promote consistent determinations among and within agencies on state plans.

Comment—One commenter suggested that the federal agencies should develop a model state plan format that could be used by the states.

Response—While we are willing to provide suggestions in response to specific state questions (including the provision of formats that other states have used successfully), we believe that states should have the flexibility to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats.

Comment—Several commenters stated that since the Adoption Assistance state plan is incorporated into the Title IV-E Foster Care state plan, it should be deleted from the list of state plans eligible for modification on

the same basis as Title IV-E Foster Care.

Response—The Department agrees with this comment, and has removed Adoption Assistance from the list. The final list of state plans that may be simplified, consolidated or substituted is published elsewhere in this Federal Register. The Department will update this list as necessary.

Section 100.13 May the Secretary waive any provision of these regulations?

Comment—This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a "loophole" allowing federal noncompliance with the Executive Order.

Response—The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver is used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there were several other comments to which the Department would like to respond.

Comment—Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. These commenters were concerned that federal agencies are not really interested in consulting with state and local governments and that, in the absence of an OMB "policing" role, agencies would tend to ignore their obligations.

Response—The Department is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President.

Comment—A number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies (e.g., environmental impact statements, historic preservation, civil rights, etc.).

Response—The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent feasible, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

Comment—Some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters.

Response—Under these regulations, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. HHS may also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where a state wishes to do so, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

In addition to the general comments on program coverage discussed in

§ 100.3 of this preamble, the Department received a number of comments on either the criteria that we used for determining program coverage, or on specific programs that the commenters believed should be included or excluded under these regulations. These comments and our responses are summarized below:

Comment.—Many commenters objected to the criteria that we used to develop Attachment A to the NPRM, which listed those programs that we believed are not subject to the Order. They stated that the only criterion that should be used is whether a program or activity "directly affects" state the local governments.

Response.—The Department has revised the criteria for evaluating each program and activity in light of these comments. The process that we used was as follows: First, we determined whether a program or activity was classified by the *Catalog of Federal Domestic Assistance* as "federal financial assistance." (The Department currently has no "direct federal development" projects.) Since the Executive Order covers only these two types of federal activity, the Department did not consider other types of programs. Second, the Department examined its financial assistance programs to determine if they met the tests established for exclusion by the July 14, 1982 White House Fact Sheet that accompanied the Executive Order (i.e., direct payments to individuals, financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects, classified programs or activities where formal consultation would endanger national security). Programs that met these tests were then excluded. In addition, in accordance with the Fact Sheet, federally recognized Indian tribes are exempted from the requirements of the Order. Third, for the remaining federal financial assistance programs administered by HHS, the Department determined whether they directly affect state and local governments. After reexamining its programs using this process, the Department developed its final list of programs to be included under these regulations. This list is published as a separate notice in today's *Federal Register*. We also believe that this list includes any program or activity subject to section 401 of the Intergovernmental Cooperation Act.

Comment.—Several States identified a number of research, demonstration and academic training programs that

they believe should be subject to these regulations.

Response.—In reexamining its proposed exclusions, the Department carefully considered the suggestions for including additional research, demonstration and academic training programs. However, the Department has concluded that the programs identified for exclusion in Attachment A to the NPRM do not directly affect State and local governments because: (1) They do not affect specific geographic areas, but rather add to the national knowledge base in a field of endeavor; (2) they are usually competed on a national basis and are not directly related to a specific geographic area; (3) the subject areas of such projects are not directly related to the responsibilities of State and local governments; (4) they provide training to improve the skills and knowledge of individual practitioners in health and human services; and (5) they do not involve substantial construction, rehabilitation or physical change to the natural environment.

Comment.—Several States recommended that programs providing direct payments to individuals or financial transfers with no federal funding discretion should be subject to these regulations, in order to allow State and local officials to monitor, anticipate and incorporate federal changes in such areas as shifts in eligibility requirements, formula-based allocations, etc.

Response.—The Department has not included these programs under the regulations. Major changes in federal program eligibility requirements, formulas, and other policies in these programs are made by HHS through regulations (often in response to statutory mandates by Congress), which provide opportunity for state and local elected officials to comment on the proposed changes.

Comment.—A number of commenters recommended that Health Maintenance Organizations (HMOs) be subject to these regulations.

Response.—The Department has excluded HMOs for two reasons: (1) Public review of HMO applications could result in unauthorized disclosure of proprietary information that could seriously jeopardize the HMO's position in the marketplace; and (2) HMOs are already required to be licensed by the State.

Comment.—Several States recommended that Professional Standards Review Organizations (PSROs) be subject to these regulations.

Response.—The Department notes that under the Tax Equity and Fiscal

Responsibility Act of 1982, Congress changed the nature of this program. PSROs will be replaced by a new system of utilization and quality "utilization and quality control peer review organizations," which will provide certain services for the Department under the Medicare program. These contractual arrangements are not federal financial assistance; furthermore, they deal with the federally-administered Medicare program. Consequently, the Department will exclude the program from coverage under these regulations. It should be noted that the statute permits States, at their option, to contract with the new organizations for conducting peer reviews under the Medicaid program. However, since this decision is within the States' purview, it will not affect the federal-state consultation system established by the Executive Order.

Comment.—Several States recommended that refugee and entrant assistance grants provided to national voluntary agencies be subject to these regulations.

Response.—The Department has not included these programs because their purpose is to assist the voluntary agencies to provide language training, employment counseling, job training and other services which will enable individual refugees and entrants to resettle in this country.

Comment.—The Department received comments and petitions from individuals and organizations objecting to the inclusion of Head Start. These commenters were concerned that the program's inclusion would jeopardize its success by giving State and local elected officials more power to interfere with Head Start projects.

Response.—The Department has included the program under these regulations. We emphasize that coverage under these regulations merely provides State and local elected officials an opportunity to comment on Head Start projects through the State's single point of contact. If the single point of contact transmits a State process recommendation, the Department is obligated either to accept that recommendation, negotiate a mutually acceptable solution, or explain why it did not accommodate the State process recommendation. In any case, the final decision continues to rest with the Department; no additional authority to approve or disapprove specific projects is provided to State and local elected officials under these regulations.

Comment.—One commenter stated that Adoption Assistance should be excluded from coverage because, like

Title IV-E Foster Care, it is a financial transfer program for which HHS has no funding discretion or direct authority to approve specific sites or projects.

Response.—The Department agrees with this comment, and has removed the Adoption Assistance program from the list of programs subject to these regulations.

Comment.—One commenter objected to the inclusion of Cancer Construction and Venereal Disease Research, Demonstration and Public Information and Education Grants. This commenter objected to the inclusion of these two programs on the grounds that only those programs previously covered under A-95 should be included under the Order, and that any programs involving direct assistance to a non-governmental entity should be excluded from the Order.

Response.—The Department has decided to include these programs. Cancer Construction involves the construction of new facilities, which directly affects State and local governments. Venereal Disease Research, Demonstration and Public Information and Education Grants are often made for the purpose of improving specific public education and information programs carried out by state and local governments, and thus should be included.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act.

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and

allow state and local governments to establish cost effective consultation procedures. It is also unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a substantial economic impact on a significant number of small entities. This rule is not subject to the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 100

Intergovernmental relations.

Appendix—Section 401 of the Intergovernmental Cooperation Act of 1968, as amended; Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

BILLING CODE 4150-04-M

Section 401 of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506.

§6506. Development Assistance

(a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

- (1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.
- (2) wise development and conservation of all natural resources.
- (3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.
- (4) adequate outdoor recreation and open space.
- (5) protection of areas of unique natural beauty and historic and scientific interest.
- (6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.
- (7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unit of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334.

§3334. Coordination of Federal aids in metropolitan areas.

(a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with the comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c) of this section, or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this subchapter, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

1. For the reasons set out in the Preamble, the Department amends Title 45, Code of Federal Regulations, by adding a new Part 100, to read as follows:

PART 100—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES PROGRAMS AND ACTIVITIES

Sec.

- 100.1 What is the purpose of these regulations?
 100.2 What definitions apply to these regulations?
 100.3 What programs and activities of the Department are subject to these regulations?
 100.4 [Reserved]
 100.5 What is the Secretary's obligation with respect to federal interagency coordination?
 100.6 What procedures apply to the selection of programs and activities under these regulations?
 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
 100.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
 100.9 How does the Secretary receive and respond to comments?
 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
 100.11 What are the Secretary's obligations in interstate situations?
 100.12 How may a state simplify, consolidate, or substitute federally required state plans?
 100.13 May the Secretary waive any provision of these regulations?

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

§ 100.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed

federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 100.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Health and Human Services (HHS).

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled

"Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of HHS or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 100.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 100.4 [Reserved]

§ 100.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 100.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the Federal Register in accordance with § 100.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the

Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities selected by a state process under § 100.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the Federal Register or other appropriate means, which the Department in its discretion deems appropriate.

§ 100.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other

than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 100.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 100.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 100.8.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for review under a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 100.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 100.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

(f) If an applicant receives comments under § 100.9(a)(2), (c) or (d) of this Part, it must forward such comments to the Department with its application materials.

§ 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with such written explanation of the decision as the Secretary in this or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written explanation 5 days after the date such notification is dated.

§ 100.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 100.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 100.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 100.12 How may a state simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 100.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

2. Subchapter D and Subchapter K, Chapter I, Title 42 of the Code of Federal Regulations is amended as follows:

TITLE 42—[AMENDED]

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

42 CFR Part 51c is amended as follows:

1. In § 51c.104, paragraph (b)(10) is revised to read as follows:

§ 51c.104 Application.

* * *

(b) * * *

(10) Evidence that all applicable requirements for review and/or approval of the application under Title XV of the Act have been met.

* * *

PART 52b—NATIONAL CANCER INSTITUTE CONSTRUCTION GRANTS

42 CFR Part 52b is amended as follows:

§ 52b.4 [Amended]

1. Section 52b.4, *Application*, is amended by removing paragraph (e).

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

42 CFR Part 55a is amended as follows:

§ 55a.4 [Amended]

Section 55a.4, *What must an application for a Black Lung Clinic grant contain?*, is amended by removing paragraph (e).

PART 56—GRANTS FOR MIGRANT HEALTH SERVICES

42 CFR Part 56 is amended as follows:

1. In § 56.104, paragraph (b)(12) is revised to read as follows:

§ 56.104 Application.

(b) * * *

(12) Evidence that all applicable requirements for review and/or approval of the application under title XV of the Act have been met.

PART 122—HEALTH SYSTEMS AGENCIES

42 CFR Part 122 is amended as follows:

1. In section 122.1, paragraph (b) is reserved as follows:

§ 122.1 Definitions.

(b) (Reserved)

2. In section 122.105, paragraph (a)(1)(vi) is revised to read as follows:

§ 122.105 Selection of agencies.

(a) * * *

(1) * * *

(vi) The adequacy of plans for developing working relationships with appropriate PSROs, State Agencies and Statewide Health Coordinating Councils; with health systems agencies which are designated for health services areas within the same standard metropolitan statistical area (as determined by the Office of Management and Budget) as the health service area for which the applicant is seeking designation; and with other planning bodies, and

3. In § 122.107, paragraphs (c)(11) (iii) and (iv) are reserved as follows:

§ 122.107 Full designation agreements.

(c) * * *

(11) * * *

(iii) (Reserved)

(iv) (Reserved)

4. In § 122.408, paragraph (b)(2) is revised to read as follows:

§ 122.408 Procedures for submission of application.

(b) * * *

(2) A copy of each application for a noncompeting continuation grant not subject to review under this subparagraph shall be provided by the applicant to the health systems agency at the time the application is submitted to the Federal funding agency.

5. In § 122.410, paragraph (a)(1)(v) is reserved as follows:

§ 122.410 Procedures for health systems agency review.

(a) * * *

(1) * * *

(v) (Reserved)

TITLE 45—[AMENDED]**PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT**

45 CFR 224 is amended as follows:

1. In § 244.11 paragraphs (d)(1) (ii) and (iii) are reserved as follows:

§ 224.11 Annual State WIN plans.

(d) (1) * * *

(ii) (Reserved)

(iii) (Reserved)

PART 1351—RUNAWAY YOUTH PROGRAM

45 CFR Part 1351 is amended as follows:

1. In § 1351.17, paragraph (c) is revised to read as follows:

§ 1351.17 How is application made for a Runaway Youth Program grant?

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

Dated: June 17, 1983.

Margaret M. Heckler,
Secretary of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Programs subject to the Provisions of Executive Order 12372, Intergovernmental Review of Federal Programs****AGENCY:** Department of Health and Human Services, Office of the Secretary.**ACTION:** Final notice.**SUMMARY:** This notice identifies the Department's programs that are subject to the provisions of Executive Order 12372 and the regulations at 45 CFR Part 100 (published elsewhere in today's Federal Register).**EFFECTIVE DATE:** September 30, 1983.**FOR FURTHER INFORMATION CONTACT:** Gordon Boe, Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Room 632-F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6036.**SUPPLEMENTARY INFORMATION:** On January 24, 1983, the Department published a Notice of Proposed Rulemaking to implement Executive Order 12372. As part of the NPRM, we

published a list of the Department's programs that were proposed for coverage under the Executive Order and the regulations. We also published a list of programs that we proposed for exclusion. We solicited public comments on both lists.

This notice provides the final list of programs subject to the regulations at 45 CFR Part 100. In the future, if the Department proposes to change this list by adding or deleting programs, we will publish the proposed changes in the Federal Register for public comment.

The programs subject to the Executive Order and 45 CFR Part 100 are:

- 13.217 Family Planning Projects
- 13.224 Community Health Centers
- 13.248 Migrant Health Centers Grants
- 13.258 National Health Service Corps
- 13.260 Family Planning Services
- 13.268 Immunization
- 13.293 State Health Planning and Development Agencies
- 13.294 Health Systems Agencies
- 13.392 Cancer Construction
- 13.600 Head Start
- 13.623 Runaway Youth
- 13.628 Child Abuse
- 13.630** Developmental Disabilities—Basic Support and Advocacy Grants
- 13.631 Developmental Disabilities—Special Projects

13.633** Aging—Title III A & B—Grants for Supportive Services and Senior Centers

13.635** Aging, Title III C—Nutrition

13.645** Child Welfare Services—State Grants

13.646** WIN

13.676 Surplus Property Utilization

13.965 Black Lung Clinics

13.977 Venereal Disease

13.978 Venereal Disease Research, Demonstration and Public Information and Education Grants

13.985 Eye Research—Construction

13.987 Health Programs for Refugees

13.988 Cooperative Agreements for State-Based Diabetes Control Programs

13.990 National Health Promotion Training Network

13.995 Adolescent Family Life Demonstration Program

None Cuban-Haitian Special Placement

None Refugee Assistance Targeted

Assistance Grants to States

None Entrant Assistance Targeted

Assistance Grants to States

Dated: June 17, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

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**Closed-ended formula grant programs to the States.