

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.

[FR Doc. 83-18963 Filed 6-23-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Programs subject to the Provisions of Executive Order 12372, Intergovernmental Review of Federal Programs

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Final notice.

SUMMARY: This notice identifies the Department's programs that are subject to the provisions of Executive Order 12372 and the regulations at 45 CFR Part 100 (published elsewhere in today's Federal Register).

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Gordon Boe, Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Room 632-F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6036.

SUPPLEMENTARY INFORMATION: On January 24, 1983, the Department published a Notice of Proposed Rulemaking to implement Executive Order 12372. As part of the NPRM, we

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

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

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

- 13.217 Family Planning Projects
- 13.224 Community Health Centers
- 13.248 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.

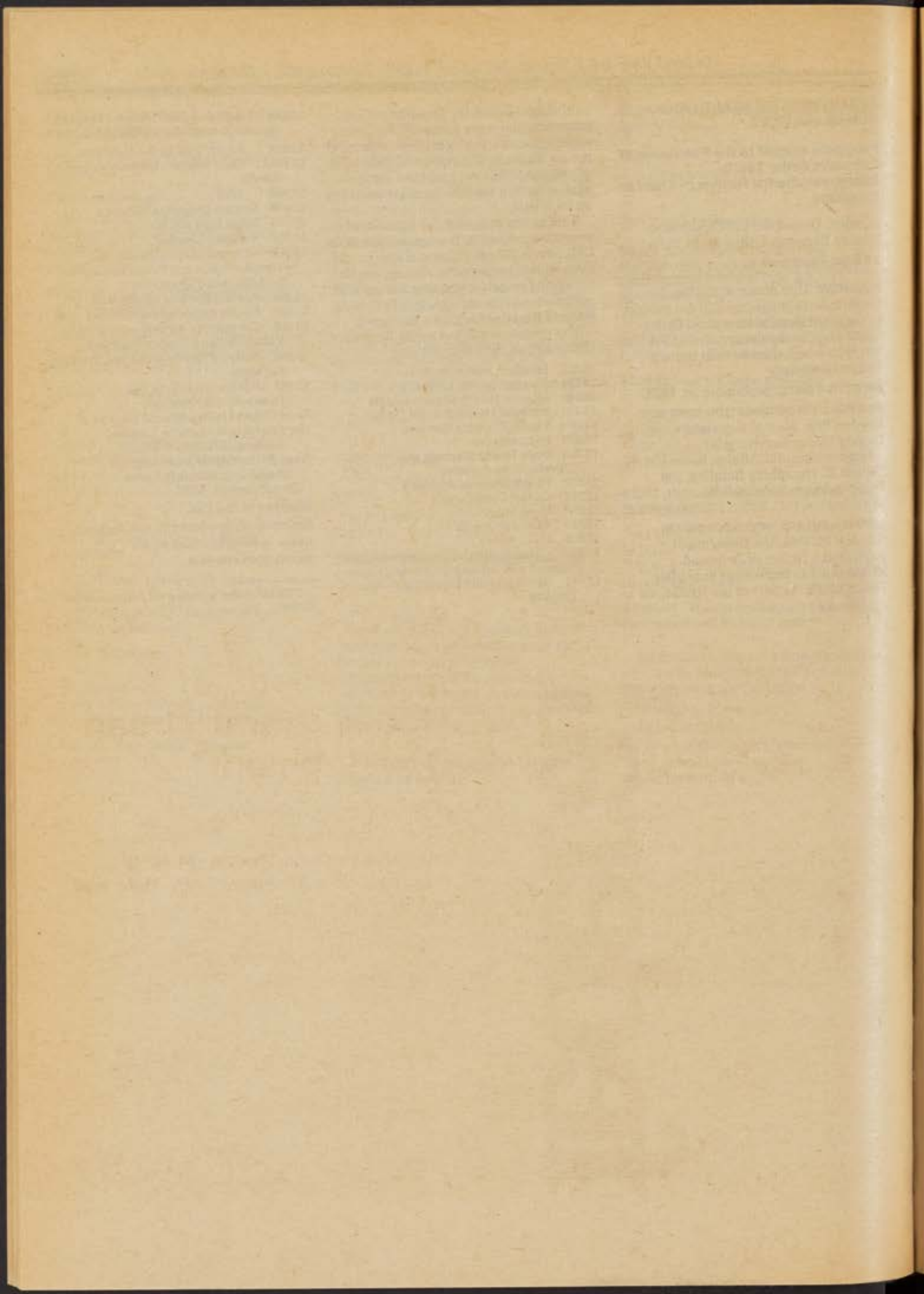
Margaret M. Heckler,

Secretary of Health and Human Services.

(FR Doc. 83-18064 Filed 6-23-83; 8:45 am)

BILLING CODE 4150-04-M

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



Federal Register

Friday
June 24, 1983

Part IX

Department of Housing and Urban Development

Office of the Secretary

**Intergovernmental Review of HUD
Programs and Activities; Final Rule and
Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 52, 570, 590, 595, 600, 720, 841, 870, 880, 881, 883, 885 and 891

[Docket No. R-83-1070]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance programs and activities of the Department of Housing and Urban Development. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, Room 10140, Department of Housing and Urban Development, Washington, D.C., (202) 755-8580 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 24, 1983, 26 federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. On February 23, 1983 (48 FR 7683), this Department published an NPRM to carry out the Executive Order. Subsequently, one more agency published an NPRM, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the Federal Register on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues

during the comment period. In addition, the Department received 49 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

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

Introduction to the Rules

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

- Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
- Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
- Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

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

State Process

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

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

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

- A designated single point of contact;
- Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
- Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;
- A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and "state process recommendation" are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the federal government for the single point of contact, although a state could choose to broaden the single point of contact role.

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

and entities can then submit such views directly to the federal agency.

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

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "State process recommendation" is developed by commenting state, areawide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation.

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

Section-By-Section Analysis

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

Proposed rule (section)	Final rule (section)
52.1	52.1.
52.2	52.2.
52.3	52.3.
52.4	52.4.
52.5(a)	52.6(b).
52.5(b)	52.6(d).
52.5(c)	52.6(c).
52.6(a)	52.6(b).
52.6(b)	52.7(a).
52.6(c)	52.8(a).
52.6(d)	Deleted.
52.6(e)	52.9.
52.7(a)	52.10(a).
52.7(b)	52.10(b), (c).
52.8	52.11.
52.9	52.12.
52.10	52.13.

Portions of the final rule not listed in this table (§§ 52.5, 52.6(a), 52.7(b), and 52.8(c)) are new.

Section 52.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act of 1968 (section 401) as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (section 204). The texts of sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue. (See Supplementary Information section of USDA's document.)

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Subsection (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and

recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 52.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to draft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of program inclusions accompanying this rulemaking provide adequate

operational information upon which state and local elected officials can act.

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

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 52.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

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

Section 52.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to § 52.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the federal government to exclude any programs or activities from coverage under the Order and these regulations, and that the elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and

activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial, assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide no-federal funds for, or are directly affected by, the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., CFDA Nos. 14.168 Land sales and 14.171 Manufactured Housing). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic federal government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). The sheer volume of transactions representing direct payments to individuals and the need for timely disbursement precludes any reasonable attempt at review and comment. Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

A purpose of block grant programs is to give funding discretion to state and local governments. There is little point in requiring state and local coordination of funding decisions under block grants when the state and local governments, rather than the federal governments, have all the discretion with respect to grant applications or other decisions.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were

proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 52.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 52.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 52.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the Federal Register list prescribed by § 52.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

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

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 52.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite

processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 52.7, discussed below.

Section 52.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates material from paragraphs § 52.3 of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

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

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

Paragraph (b) is new, and is intended to respond to concerns expressed by

commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance. This notice may be either through publication (e.g., a notice in the *Federal Register* or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 52.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 52.6(c) of the NPRM (redesignated § 52.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance under the covered mortgage insurance programs and the Urban Development Action Grant program, for which the comment period would remain 30 days. The UDAG program funds eight times a year and the entire selection process cannot exceed 60 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could

be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 52.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key element in any timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 52.6 of the NPRM has been dropped. A new § 52.9 of the final rule describes how the Secretary receives and responds to comments.

Section 52.9 How does the Secretary receive and respond to comments?

This new section replaces § 52.6(d) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 52.6(d) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

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

each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 52.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the federal government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-days review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review

period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 52.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation or a particular program or project will be seen and considered by the Department. The Department may request that all comments be transmitted with the state process recommendation.

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

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as section 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure concerned officials that their views are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The

Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

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

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

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state

processes have the option of also sending comments through the applicant to the federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 52.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) Do not compose or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "making efforts to accommodate or explain" a state process recommendation means: (1) Accepting that recommendation, (2) reaching a mutually agreeable solution through the state process, or (3) giving the state a timely, simple explanation of the Department's decision. In response to a substantial number of comments, § 52.(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral

communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 52.11 What are the Secretary's obligations in interstate situations?

This section is based on § 52.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except covered mortgage insurance programs.

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

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a

case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

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

For example, the Metropolitan Washington, D.C. Area Council of Governments represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments has been delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 52.12 [Reserved]

This section has been reserved since the Department currently administers no programs which require submission of state plans.

Section 52.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare

instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the waiver will be written and will be made only on a determination of good cause supported by reasons and facts. The Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies, would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

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

of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems, agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

Scope Issue—Background

In its NPRM, the Department provided a List of Proposed Exclusions from Scope and a List of Proposed Inclusions. These two lists identified all HUD programs contained in the Catalogue of Federal Domestic Assistance. Fifty-nine programs were proposed for exclusion and ten for inclusion.

The programs proposed for exclusion were the following:

(1) All 23 of the single family mortgage insurance programs (CFDA Nos. 14.105, .108, .110, .117 through 123, .125, .130, .132, .133, .140, .142, .152, .159, .161, .162, .165, and .166).

(2) All 21 of the multifamily mortgage insurance programs and related programs (CFDA Nos. 14.103, .112, .115, .116, .124, .126 through .129, .134, .135, .137, .138, .139, .149, .151, .153, .154, .155, .164, and .167).

(3) Two of six assisted housing programs (CFDA Nos. 14.156 Existing Housing component of the Section 8 program, and 14.157 Housing for the Elderly and Handicapped).

(4) Five of seven community planning and development programs (CFDA Nos. 14.218 CDBG Entitlement Grants, 14.220 Section 312 Rehabilitation Loans, 14.222 Urban Homesteading, 14.228 CDBG, State's Program and 14.229 CDBG Discretionary Fund).

(5) Three of four fair housing and equal opportunity programs (CFDA Nos. 14.400 Equal Opportunity in Housing, 14.402 Nondiscrimination in Federally-Assisted Programs, and 14.403 Community Housing Resource Board Program).

(6) Five of six miscellaneous programs (CFDA Nos. 14.141 Nonprofit Sponsor Assistance Program, 14.168 Land Sales, 14.171 Manufactured Housing—Mobile Home Construction, 14.207 New Communities—Loan Guarantees, and 14.506 General Research and Technology Activity).

The ten programs proposed for inclusion were the following:

(1) Five of six assisted housing programs (CFDA Nos. 14.146 Low Income Housing—Assistance Program, 14.147 Low Income Housing—Homeownership Opportunities for Low Income families, 14.156 all components of the Section 8 program except Existing Housing, 14.158 Comprehensive Improvement Assistance Program, and 14.170 Congregate Housing).

(2) Two of six community planning and development programs (CFDA Nos. 14.219 CDBG Small Cities Program and 14.221 Urban Development Action Grants Program).

(3) One of three fair housing and equal opportunity programs (CFDA No. 14.401 Fair Housing Assistance Program).

(4) Two of five miscellaneous programs (CFDA Nos. 14.169 Housing Counseling Program, 14.211 Surplus Land for Low and Moderate Income Housing).

The Department received 49 comments concerning the proposed program inclusions and exclusions. Seven commenters urged that CFDA No. 14.401 Fair Housing Assistance Program, and one commenter urged that CFDA No. 14.221 Urban Development Action Grants Program, be excluded from the scope of this rule.

Forty-one commenters made either general objections to the Department's proposed exclusions or requested that specific programs be included within the scope of this rule. The Department received specific inclusion requests for every program proposed for exclusion except the following: CFDA 14.168 Land Sales, 14.171 Manufactured Housing, 14.402 Nondiscrimination in Housing and 14.506 General Research and Technology.

Many of the comments which raised a general objection to the proposed exclusion objected to the Department making any decision concerning program inclusion. These comments are addressed *supra* under the discussion of § 52.3.

Final Scope Decisions

After considering the public comment the Department has determined to include 23 programs within the scope of this rule as follows:

(1) Twelve insured housing programs, including CFDA No. 14.125 Land Development and eleven of the 21 multifamily mortgage insurance programs, (CFDA Nos. 14.112, .115, .124, .126, .127, .134, .135, .137, .138, .139 and .151). Applications for insurance of advances on multifamily mortgage projects with 200 or more units in urbanized areas and 50 or more units in nonurbanized areas are subject to these rules.

(2) All six of the assisted housing programs (CFDA Nos. 14.146, .147, .156, .157, .158 and .170). Applications under the public housing programs and Section 8 programs (CFDA Nos. 14.146, .147 and .156) are subject to this rule if they are for projects with 50 or more units in urbanized areas and 25 or more units in nonurbanized areas. Applications under CFDA No. 14.157 Housing for the Elderly or Handicapped would be subject to these rules if they are for projects with 200 or more units in urbanized areas and 50 or more units in nonurbanized areas.

(3) Two of six community planning and development programs (CFDA Nos. 14.218 CDBG Entitlement Grants and 14.221 Urban Development Action Grants). CFDA No. 14.219 CDBG Small Cities Program is the only program proposed for inclusion that is not in the final list of included programs. The Entitlement Program proposals will be subject to the intergovernmental review process if they appear to involve activities covered by Sec. 204 of the Demonstration cities and Metropolitan Development Act of 1968.

(4) There is no change from the NPRM with respect to the fair housing and equal opportunity programs, CFDA No. 14.401 Fair Housing Assistance Program

remains included. Coverage, however, is limited to applications to Type II competitive component of this program.

(5) There is no change from the NPRM as to which miscellaneous programs are included. CFDA Nos. 14.169 Housing Counseling Program and 14.211 Surplus Land Program are included. The thresholds for the Surplus Land Program are the 200/50 units thresholds applicable to the multifamily mortgage insurance programs unless financial assistance is to be provided under one of the assisted housing programs with 50/25 units thresholds in which case the lower thresholds apply.

Response to Comments—Mortgage Insurance Programs

With respect to the mortgage insurance programs, several commenters requested that all or most of these programs be covered by the intergovernmental review process. They objected to the proposed exclusions being based on the fact that the programs involved essentially private transactions. One commenter noted that while purely local concerns may be considered through the requirement that the housing meet local zoning ordinances and building codes, the regional impacts of the housing may be overlooked. Another commenter suggested that intergovernmental review would reduce the Department's mortgage risk.

The commenters' objections were generally coupled with a recommendation that program exclusions should be based on whether the projects or activities funded under the program would have a significant impact on the area and its community development. Certain commenters pointed out that this standard is based on the express language of the Intergovernmental Cooperation Act of 1968. One commenter urged in this regard that program coverage should include any program that involves substantial construction, rehabilitation or alteration of the natural environment.

The Department agrees that the ultimate question in determining the issue of program inclusion is whether the federal financial assistance provided under the program could have a significant impact on an area and its community development. The Department also acknowledges that too much emphasis may have been placed in the NPRM on the nature of the participants.

Nonetheless, the Department disagrees with the commenters who urged including the single family mortgage insurance programs. These programs provide no federal financial

assistance for the construction of the housing involved. HUD single family mortgage insurance merely provides an alternative source of financing to the ultimate individual homebuyer once the housing has been constructed. The housing is developed with no federal assistance and can be constructed regardless of whether or not HUD determines that mortgage insurance will be available to eligible purchasers.

In contrast, HUD under certain multifamily mortgage insurance programs insures the mortgage advances which finance the construction of projects. The eligibility of the project for mortgage insurance is usually essential for the project to proceed.

The Department has included, within the scope of this rule, its multifamily mortgage insurance programs to the extent they involve insuring mortgages to finance the construction or substantial rehabilitation of projects containing 200 or more units in urban areas and 50 or more units in nonurban areas. The thresholds are intended to assure that the review process is directed toward projects which could have a significant impact on an area.

The Department has not included CFDA Nos. 14.116 Mortgage Insurance—Group Practice Facilities, 14.128 Mortgage Insurance—Hospitals or 14.129 Mortgage Insurance—Nursing Homes. Applications under these programs require approval by local Health Systems Agencies or other cognizant state entities which provide a mechanism for intergovernmental review. In addition, the feasibility of applications for mortgage insurance for hospitals is determined by the Department of Health and Human Resources under CFDA No. 13.293 State health Planning and Development Agencies which is subject to the intergovernmental review process. Any HUD requirement for review under the Executive Order would be duplicative of this prior review.

Assisted Housing

Several commenters raised the same objections to the proposed exclusion of CFDA 14.157 Housing for the Elderly and Handicapped that were raised with respect to the mortgage insurance programs. The Department has made this program subject to this rule and has applied the same 200/50 unit thresholds applicable to the multifamily mortgage insurance programs. In addition the Department will use thresholds of 50 or more units in an urbanized area and 25 or more units in nonurbanized areas with respect to the assisted housing programs that involve new construction

and substantial rehabilitation (CFDA Nos. 14.146, 147 and 156).

Community Planning and Development

The Department received several comments requesting inclusion of each of the CDBG programs (CFDA Nos. 14.218, 14.219, 14.228, 14.229). The Department of HUD proposed to exclude all but CFDA No. 14.228 HUD administered Small Cities Program.

Those commenters who stated reasons in support of their request for inclusion of these programs stressed the fact that these programs have a significant impact on the areas involved. The Department has no argument with this point. The basis for the proposed exclusion of three of these programs is not that the programs have little impact on the areas involved but that the Department has little or no funding discretion or direct authority to approve specific site or projects.

The Order and this rule have been revised since publication of the NPRM to state expressly that they implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Since assistance under the Entitlement Program is sometimes provided for water and sewer type facilities covered by section 204, HUD has made this program subject to this rule with respect to those portions of final statements which consist of planning or construction of a water or sewer facility in a metropolitan area.

The Department has determined to exclude CFDA No. 14.219 CDBG Small Cities Program because 46 states have opted to administer a small cities program under CFDA No. 14.228 State's Program. It is anticipated that the State's Program ultimately will completely replace the Small Cities Program. However, if a number of states, as is their option, discontinue administering the State's Program, the Department will consider, at a future time, adding the Small Cities Program to the list of included programs.

Fair Housing and Equal Opportunity

The Department received seven comments urging the CFDA 14.401, Fair Housing Assistance Program be excluded from the scope of this rule. The commenter argued that this program should be excluded because:

1. There are several layers of local review under current procedures of "substantially equivalent" FHAP agencies;
2. The review process could be abused to favor state agencies over local agencies;

3. The review process could be abused to interfere with civil rights enforcement activities;

4. State and local elected officials currently have a level of control over whether a state or local agency is eligible for Fair Housing Assistance;

5. The nature of the FHAP programs is such that there is little purpose to be served by the review process.

The Department does not believe that the concerns of abuse are well founded. The intergovernmental review process is a statutory and Executive Order based process for obtaining the view of entities, including state and local elected officials concerning federal decisions which significantly affect their areas. The ultimate funding decisions remain with the federal government and must conform to program criteria. The Department sees no reason why commenters under the process would attempt to misuse this process and even if biased comments were received, the Department sees little risk that they would interfere with the Department's ability to administer the program in accord with applicable standards.

The Department also believes that the arguments concerning the existence of review and of state and local control, under current state and local procedures is directed more appropriately to the state's decision to select this program.

The Department believes, with respect to the type I noncompetitive component of the FHAP program, that the commenters are correct in their claims that little purpose would be served by making these applications subject to this rule. Funding under this component is formula based and is basically dependent on the number of housing complaints processed by the agency in the preceding year. Furthermore, program participants simply perform a function which otherwise would be carried out by the Department. Accordingly, the Department has modified its program inclusion to indicate that only applications under the type II competitive component of the FHAP program are subject to this rule. However, since the type II FHAP component is a national competition, with final selection based upon a ranking of all proposals against one another, the Department foresees the possibility that some states may not choose to designate this program for review. Where it has been designated, HUD will consider any comments that may be offered by individual states or by localities in light of the national criteria and ranking factors to be used to select proposals to be forwarded.

Miscellaneous Programs

Several commenters listed CFDA No. 14.141 Non profit Sponsor Assistance Program as a program that should be included under the scope of this rule. In each of these comments the program was included in a list of other programs which the commenter wanted included. None of the commenters provided reasons for inclusion that were specifically related to this program. The Department believes that including the Housing for Elderly and Handicapped Program (CFDA No. 14.157) eliminates any need to include this program since it only provides seed money to sponsors of elderly and handicapped projects.

Several commenters included CFDA No. 14.207 New Communities in their lists of programs to be included under the scope of the rule. The Department has not included the program because it has been phased out and the Department is not accepting any new applications.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 12291

This final rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda

This rule was listed at 48 FR 18065 as Item S-1-83 in the Department's Semiannual Agenda or Regulations published on April 25, 1983, pursuant to

Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are: 14.146, 14.156, 14.207, 14.218, 14.221, and 14.229.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 52

Intergovernmental relations.

24 CFR Part 570

Community development block grants, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs—housing and community development.

24 CFR Part 595

Community development, Grant programs—housing and community development, Urban renewal.

24 CFR Part 600

American Samoa, Community facilities, Energy conservation, Environmental protection, Grant programs—housing and community development, Guam, Housing, Intergovernmental relations, Northern Mariana Islands, Pacific Islands Trust Territory, Virgin Islands.

24 CFR Part 720

Grant programs—housing and community development, Loan programs—housing and community development, New communities, Technical assistance, Securities, Community development, Housing.

24 CFR Part 841

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

24 CFR Part 870

Public housing.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Low- and moderate-income housing.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Low- and moderate-income housing.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 885

Aged, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low- and moderate-income housing.

24 CFR Part 891

Grant programs—housing and community development, Intergovernmental relations, Housing.

For the reasons set out in the preamble, the Department of Housing and Urban Development amends Title 24, Code of Federal Regulations as follows:

1. Part 52 is revised to read as follows:

PART 52 INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

- 52.1 What is the purpose of these regulations?
- 52.2 What definitions apply to these regulations?
- 52.3 What programs and activities of the Department are subject to these regulations?
- 52.4 What are the Secretary's general responsibilities under the Order?
- 52.5 What is the Secretary's obligation with respect to federal interagency coordination?
- 52.6 What procedures apply to the selection of programs and activities under these regulations?
- 52.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
- 52.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
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- 52.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Sec.

52.11 What are the Secretary's obligations in interstate situations?

52.12 [Reserved]

52.13 May the Secretary waive any provision of these regulations?

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 52.1 What is the purpose of these regulations?

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

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

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

§ 52.5 What definitions apply to these regulations?

"Department" means the U.S. Department of Housing and Urban Development.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Housing and Urban Development or an official or employee of the Department acting for the Secretary under a delegation of authority.

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

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

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

§ 52.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

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

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

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

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

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

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

(a) A state may select any program or activity published in the Federal Register in accordance with § 52.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

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

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

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

(a) For those programs and activities covered by a state process under § 52.6, the Secretary, to the extent permitted by law—

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

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

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

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

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

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

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

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

(1) At least 30 days from the date established by the Secretary to comment on proposed federal financial assistance under a covered mortgage insurance program or under the Urban Development Action Grant Program.

(2) At least 60 days from the date established by the Secretary to comment on proposed federal financial assistance other than under a covered mortgage insurance program.

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

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

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

(a) The Secretary follows the procedures in § 52.10 if—

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

(2) That office or official transmits a state process recommendation for a program selected under § 52.6.

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

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

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

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials

and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 52.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 52.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

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

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

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

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

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

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

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

(a) The Secretary is responsible for—

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

(2) Notifying appropriate officials and entities in states which have adopted a

process and which select the Department's program or activity.

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

(4) Responding pursuant to § 52.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 52.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 52.12 [Reserved]

§ 52.13. May the Secretary waive any provision of these regulations?

Upon determination of good cause, the Secretary may waive any provision of these regulations. Every waiver is in writing and sets forth the facts and reasons upon which the Secretary relies in waiving the provisions.

PART 50—PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

2. In § 50.25, the introductory text is revised to read as follows:

§ 50.25 Public participation.

HUD shall inform the affected public about NEPA-related hearings and public meetings and environmental documents. Project actions which result in a FONSI normally require only notification to the state process adopted under part 52 of this chapter, "Intergovernmental Review of Department of HUD Programs". In all cases HUD shall mail notices to those who have requested them. Additional efforts for involving the public in specific notice or compliance requirements shall be made in accord with the NEPA-related statutes and Executive Orders and their implementing procedures identified in § 50.4.

3. In § 50.31, paragraph (c) is revised to read as follows:

§ 50.31 Environmental assessments.

(c) Comments received from the state process adopted under part 52 of this chapter, "Intergovernmental Review of HUD Programs" or from states and local environmental agencies shall be considered in the preparation of the EA

and be reported in any Draft EIS when it is circulated for review.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

§§ 570.310, 570.312, 570.400 and 570.403 [Amended]

4. In Part 570, §§ 570.310, 570.312(g), 570.400(d), and 570.403(c)(5) are removed and reserved.

PART 590—URBAN HOMESTEADING

§ 590.11 [Amended]

5. In § 590.11, paragraph (c) is removed and reserved.

PART 595—NEIGHBORHOOD SELF-HELP DEVELOPMENT PROGRAM

§ 595.109 [Removed and Reserved]

6. In Part 595, § 595.109 is removed and reserved.

PART 600—COMPREHENSIVE PLANNING ASSISTANCE

§§ 600.7, 600.160, 600.170, and 600.250 [Amended]

7. In Part 600, §§ 600.7(j), 600.160, 600.170, and 600.250(c) are removed and reserved.

PART 720—FINANCING PUBLIC AND PRIVATE NEW COMMUNITY DEVELOPMENT

§ 720.43 [Removed and Reserved]

8. In Part 720, § 720.43 is removed and reserved.

PART 841—PUBLIC HOUSING DEVELOPMENT

9. In § 841.405, paragraph (b) is revised to read as follows:

§ 841.405 Technical processing and approval.

(b) *Technical Processing.* Upon determining that a proposal is acceptable for technical processing, the field office shall:

(1) Send a notification to the chief executive officer (or designee) of the unit of general local government pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439), inviting a response within thirty (30) calendar days from the date of the field office transmittal letter;

(2) Evaluate the proposal to determine compliance with all program requirements and, if applicable, the comments received from the unit of general local government;

(3) Complete an environmental review in accordance with the requirements of

the National Environmental Policy Act of 1969; and

(4) Determine the appraised value of the site or property.

PART 870—PHA-OWNED PUBLIC HOUSING PROJECTS—DEMOLITION OF BUILDINGS OR DISPOSITION OF REAL PROPERTY

§ 870.9 [Removed and Reserved]

10. In Part 870, § 870.9 is removed and reserved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

11. In § 880.302, paragraph (c) is revised to read as follows:

§ 880.302 Procedures for resumption of processing of proposals and preapproved site requests.

(c) *Section 213 Clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

12. In § 880.304 paragraph (e) is revised to read as follows:

§ 880.304 Publication of NOFA and receipt of proposals.

(e) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

13. In § 880.306, paragraph (c) is revised to read as follows:

§ 880.306 Preliminary evaluation and technical processing.

(c) Technical Processing.

(1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section),

site, design, experience of the owner and other participants, local government comments, extent of displacement and feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

14. In § 880.307, paragraphs (b) and (d) are revised to read as follows:

§ 880.307 Selection of proposals and use of remaining or additional contract authority.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals. The ranking factors are: rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

(d) Units of general local government notified under § 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

15. In § 881.302, paragraph (c) is revised to read as follows:

§ 881.302 Procedures for resumption of processing of proposals and preapproved site requests.

(c) *Section 213 clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

16. In § 881.304, paragraph (f) is revised to read as follows:

§ 881.304 Publication of NOFA and receipt of proposals.

(f) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

17. In § 881.306, paragraph (c) is revised to read as follows:

§ 881.306 Preliminary evaluation and technical processing.

(c) *Technical processing.* (1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, physical condition of the property, its suitability for rehabilitation and whether or not the work proposed is adequate and can be feasibly accomplished; overall design; experience of the owner and other participation, and local government comments, extent of displacement

feasibility or relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR, Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

18. In § 881.307, paragraphs (b) and (d) are revised to read as follows:

§ 881.307 Selection of proposals and use of remaining or additional contract authority.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals. The ranking factors are: rents; site (including minority concentration consideration); design; suitability and potential of property for rehabilitation and adequacy of rehabilitation proposed; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects (except permanent financing available through the Government National Mortgage association under authority of section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by

the Assistant Secretary for Housing and included in the developer's packet.

(d) Units of general local government notified under § 881.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

§§ 881.704 and 881.707 [Amended]

19. In Part 881, §§ 881.704(b), 881.707 (f) and (j) are removed and reserved.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

20. In § 883.403, paragraph (b) is revised to read as follows:

§ 883.403 HFA submission of proposals.

(b) *Previous Participation; Review and Comment by Local Government.* (1) The HFA and the HUD field office may, where feasible, develop procedures by which the previous participation review, and the local government review and comment under Part 891 are initiated prior to Proposal submission. The Proposal may not be approved until the HUD field office has received a copy of the response from the Chief Executive Officer of the unit of general local government where appropriate, pursuant to 24 CFR Part 891.

(2) If special procedures as described in paragraph (b)(1) of this section are not adopted, the HUD field office will conduct its previous participation review or initiate Part 891 review and comment procedures after the Proposal has been submitted.

21. In § 883.405, paragraph (b) is revised to read as follows:

§ 883.405 Notification of acceptability of proposal.

(b) *Notification.* The unit of general local government must be notified by HUD of its final action at the time the HFA is notified.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

22. In § 885.220, paragraph (d)(1) is removed, paragraphs (d) (2), (3), (4), (5) and (6) are redesignated as (d) (1), (2), (3), (4) and (5) and newly designated paragraphs (d)(2) and (e) are revised to read as follows:

§ 885.220 Review of application for fund reservation.

(d) *Technical Processing.* When an Application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) * * *

(2) The Application will be evaluated by the field office on the basis of those factors which may be necessary to determine the eligibility and acceptability of the Sponsor and Borrower, acceptability of the location (site), acceptability of the design concept, compliance with the Fair Market Rent Limits, and the comments, if any, received during the response period from the appropriate unit of general local government.

(e) For each allocation area, the field office shall rank in order each Application on the basis of its assessment of the Borrower's qualifications, the proposed site, the design concept, and the comments, if any, received from the unit of general local government. The field office shall identify for selection the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in any allocation area under the allocation of fund authority: *Provided, however, That in accordance with 24 CFR 891.404(d) priority will be given to acceptable Applications from localities which did not previously receive assistance.*

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

23. In § 891.202, paragraph (b)(7) is removed and reserved and the introductory text to paragraph (a) is revised to read as follows:

§ 891.202 Notification of local government.

(a) The field office shall notify the chief executive officer of the local government having a HAP, no later than ten working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing), that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(b) * * *

(7) [Reserved]

24. In § 891.205, paragraph (b) is revised to read as follows:

§ 891.205 HUD review of application for housing assistance.

(b) *Review process.* The field office finding of consistency or inconsistency shall be based on the information provided in the HAP, the application for housing assistance, and an analysis of the comments of the local government, including comments submitted by the chief executive officer on behalf of the local government.

25. In § 891.303, paragraph (b)(3) is removed and reserved and the introductory text to paragraph (a) is revised as follows:

§ 891.303 Notification of local government.

(a) The field office shall notify the chief executive officer no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing) that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(b) * * *

(3) [Reserved]

26. In § 891.305, paragraph (b) is revised to read as follows:

§ 891.305 HUD review of applications for housing assistance.

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government including comments submitted by the chief executive officer on behalf of the local government. The field office shall make an independent determination as to whether there is a need for housing assistance and whether facilities and services are adequate before approving the application.

Dated: June 16, 1983

John J. Knapp,
Acting Secretary, Housing and Urban
Development.

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