DEPARTMENT OF THE TREASURY

Intergovernmental Review of the Department of Treasury Programs and Activities

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice.

SUMMARY: Executive Order 12372 (47 FR 30959, July 16, 1982), "Intergovernmental Review of Federal Programs", and agency regulations published elsewhere in today's **Federal Register** are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. These regulations also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. The Treasury Department is not publishing rules to carry out the Executive Order or these statutes because we have concluded that none of the Department's programs are subject to the Order. Promulgation of rules is therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Charles M. Mohn, Office of State and Local Finance, Room 3026, Department of Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3197) the Department of the Treasury, along with 25 other federal agencies published notices proposing that their programs not be subject to the Order or Notices of Proposed Rulemaking (NPRM). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the public comment period, and scheduling a public meeting for May 5, 1983.

During the comment period, the Department received 2 comments specifically related to the proposed exclusion of all of its programs and activities from coverage under the Order. The Department also was provided copies of selected comments received by OMB or the federal agencies that had published Notices of Proposed Rulemaking. These comments addressed general issues of program coverage.

In preparing this notice, the Department considered these comments, as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order, and that elected officials of State and local governments are the only proper parties to decide what should be excluded from the State process of intergovernmental review. Other commenters objected to the various criteria used by federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development, and the Order mandates consultation only when State and local governments provide non-federal funds for, or are directly affected by, the proposed federal action. Programs and actvities not falling into either of the categories are clearly outside the scope of the Order. Further, it is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development. There are also actions related to Federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be inappropriate.

Two comments were received by the Department of the Treasury that were specific to Treasury programs. The commenters questioned the exclusion of Treasury programs from the Executive Order. It was explained that with the exception of Revenue Sharing, these programs were neither "federal financial assistance" nor "direct federal development," as defined by the Intergovernmental Cooperation Act which is the basis for the Executive Order. Also, Treasury's decision is based on OMB guidance that programs that are "brief, episodic, and 'on request' " are excluded.

It was explained that Revenue Sharing is an entitlement program under which allocation are made according to a statutorily imposed formula. Thus, Revenue Sharing is excluded by the terms of the Intergovernmental Cooperation Act and therefore, by the Executive Order.

The Department has concluded that, presently, none of its programs or activities are covered by the Executive Order. When new programs or activities are authorized or initiated by the Department, the Department will determine whether these new programs or activities fall within the scope of the Order. If the Department intends to exclude new or additional programs or activities from coverage under the Order, a notice soliciting public comments will be published in the **Federal Register.** If the determination is made that a new or additional program should be included, the Department will then promulgate rules implementing the Order by using the customary procedures for rulemaking.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials will have the opportunity to have their views considered by the Department under any consultation procedures provided for in existing or future program statutes.

Dated: June 16, 1983.

Peter Wallison,

General Counsel.

[FR Doc. 83-16897 Filed 6-23-83; 8:45 am]

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federal register

Friday
June 24, 1983

Part XVI

ACTION

Intergovernmental Review of ACTION Programs; Final Rule

ACTION

45 CFR Part 1233

Intergovernmental Review of ACTION Programs

AGENCY: ACTION.

ACTION: Final rule.

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

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald C. Owens, Office of General Counsel, ACTION, Washington, D.C. 20525, phone (202) 254-7963.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3200), ACTION, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. ACTION, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101), reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Comments received by OMB and other federal agencies were incorporated in the Agency's rulemaking docket. ACTION received no substantive comments relating to its proposed regulation.

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

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

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

Introduction to the Rules

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

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and,
—Revokes OMB Circular A-95.

Salient Features of the Policies Implementing E.O. 12372

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

State Process

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

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

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

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

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

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

For any proposed action under a selected program or activity, the state

has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

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

Single Point of Contact

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

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

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

"Accommodate or Explain"

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

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

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

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

Section-by-Section Analysis

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

Proposed Rule	Final Rule
Section:	Section:
1233.1	1233.1.
1233.2	1233.2.
1233.3(a)	1233.3.
(b)	1233.7(a).
1233.4 Reserved	1233.4 Reserved.
1233.5(a)	1233.6(b).
(b)	(d).
(c)	(c).
1233.6(a)	1233.8(b).
(b)	1233.7(a).
(c)	1233.8(a).
(d)	Deleted.
(e)	1233.9.
1233.7(a)	1233.10(a).
(b)	(b), (c).
1233.8	1233.11 Reserved.
1233.9 Reserved	1233.12 Reserved.
1233.10	1233.13.

Portions of the final rule not listed in this table (§§ 1233.5, 1233.6(a), 1233.7(b), and 1233.8(c)) are new.

Section 1233.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements.

The text of section 401 is printed in the Department of Agriculture final rule published elsewhere in this issue (see Supplementary Information section of U.S.D.A.'s document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under these statutes. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Agency's responsibilities under these statutory provisions.

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

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

grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 1233.2 What definitions apply to these regulations?

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

The Agency chose not to include a definition of "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadevertently leaving something in that should be excluded or leaving something out that should be included.

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

The Agency also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in section 1233.10. In this section, the Director accepts the state process recommendation or reaches a mutually agreeable solution. If the Agency does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Agency believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

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

Section 1233.3 What programs of the Agency are subject to these regulations?

This section is substantively very similar to paragraph 3(a) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapons systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Agency's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation.)

To provide information on the programs eligible for selection for state processes, the Agency is publishing a notice listing these "included" programs. This information is being published in a separate notice rather than as part of this rule to allow future changes to be made more conveniently. The Agency will seek public comment on proposed future program exclusions, as these occur.

Section 1233.4 [Reserved]

Section 1233.5 What is the Director's obligation with respect to federal interagency coordination?

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

Section 1233.6 What procedures apply to the selection of programs under these regulations?

Paragraph (a) of this section is new. It makes clear that any ACTION program published in the **Federal Register** list prescribed by § 1233.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to

provide such an assurance when the state submits its initial list of selected programs.

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

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (b) and (c), respectively, of § 1233.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Director with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Agency to establish deadlines for states to inform the Director of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in the coordination procedures. In addition, the Agency has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program is not selected for a state process. This question is answered in paragraph (b) of § 1233.7, discussed below.

Section 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

Paragraph (a) incorporates material from §§ 1233.3(b) and 1233.6(b) of the NPRM, except that the final regulation specifies that the Director's obligation to communicate with state and local elected officials applies to programs subject to the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Director will communicate.

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

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

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

Section 1233.8 How does the Director provide states the opportunity of commenting on proposed federal financial assistance?

More commenters—over a third of the total—addressed § 1233.6(c) of the NPRM (redesignated § 1233.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Director would give states at least 30 days to comment on any proposed federal financial assistance. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Agency has decided to lengthen the comment period to 60 days in all cases [except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days].

The Director will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. Where a program is not selected for the state process, the Agency will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Director will establish this starting date, the language of the NPRM permitting the Director to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Director will ensure the commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 1233.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and the communication with the Agency have been delegated. This paragraph is intended to make clear that when this

responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Paragraph (e) of § 1233.6 of the NPRM has been dropped. A new § 1233.9 of the final rule describes how the Director receives and responds to comments.

Section 1233.9 How does the Director receive and respond to comments?

This new section replaces § 1233.6(e) of the NPRM and elaborates in substantially greater detail the Director's obligations concerning the receipt of and response to comments. Section 1233.6(e) had provided that the Director would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

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

In response to these comments, and consistent with the amended Executive Order and the Agency's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act, the Agency has made substantial changes in this paragraph.

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

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

Paragraph (a) obligates the Director to follow the "accommodate or explain" procedures of § 1233.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Agency.) If these conditions are not met, the Director will still consider all comments received, but the "accommodate or explain" obligation will not apply.

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

The Agency's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Agency's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus was to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Agency will respond as provided in § 1233.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Agency under these rules. Moveover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Agency.

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

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

In paragraphs (c) and (d), the Agency makes provision for responding to

comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local entities may submit comments either to the applicant or to the Agency, or both. The Agency is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program of the Agency.

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

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

Although the Agency recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Agency does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Agency believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Agency will expect the applicant to forward those comments with its application to the Agency. However, this does not obviate the necessity for transmitting the state process recommendation to the Agency through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Agency.

Section 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

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

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Agency may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Agency will always send a written explanation of the nonaccommodation.

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

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

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

Section 1233.11 [Reserved.]

Section 1233.12 [Reserved]

Section 1233.13 May the Director waive any provision on these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Agency is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Agency uses the emergency waiver provision, the Agency will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decision-making concerning the matter about which the waiver was used. In addition, the Agency will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to the comments specifically pertaining to various features of these regulations, there are several other comments made to the Agency to which the Agency would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight

role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

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

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

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

Scope

The Agency has not excluded any of ACTION's programs under this rule. Historically, the only ACTION programs covered by OMB Circular A-95 were the Older American Volunteer Programs (OAVP) and, generally, only positive comments were received. Some states, in their A-95 process, have elected not to review proposals for renewal of ongong OAVP projects. Numerous state and local government entities are themselves ACTION grantees or providers of non-federal support for local projects. Outside of OAVP, the agency and the states have had no experience with review of other ACTION programs beyond the legislated Governor's review of VISTA proposals. Accordingly, the agency will review the present decision to make no exclusions at a future date as circumstances dictate.

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

The Agency has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Agency and allow state and local governments to establish cost effective consultation procedures. For this reason, the Agency believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Agency certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in 45 CFR Part 1233

Intergovernmental relations.

For the reasons set out in the Preamble, ACTION amends Title 45, Code of Federal Regulations, by adding a new Part 1233, to read as follows:

PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS

Sec.

Authority.—Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6505).

§ 1233.1 What is the purpose of these regulations?

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

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

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

§ 1233.2 What definitions apply to these regulations?

"Agency" means ACTION, the National Volunteer Agency.

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

"Director" means the Director of ACTION, or an official or employee of the Agency acting for the Director under a delegation of authority.

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

§ 1233.3 What programs of the Agency are subject to these regulations?

The Director publishes in the Federal Register a list of the Agency's programs that are subject to these regulations.

§ 1233.4 [Reserved].

§ 1233.5 What is the Director's obligation with respect to federal interagency coordination?

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

§ 1233.6 What procedures apply to the selection of programs under these regulations?

(a) A state may select any ACTION program published in the Federal Register in accordance with § 1233.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Agency's programs selected for that process.

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

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

§ 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

(a) The Director provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Agency. For those programs covered by a state process under § 1233.6, the Director, to the extent permitted by law:

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

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

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

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

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

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

§ 1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?

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

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

(2) At least 60 days from the date established by the Director to comment on proposed federal financial assistance other than noncompeting continuation awards.

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

§ 1233.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 1233.10 if:

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

(2) That office or official transmits a state process recommendation for a program selected under § 1233.6.

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

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

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

(d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the prodecures of § 1233.10 of this Part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 1233.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

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

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

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

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

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

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

§ 1233.11 [Reserved]

§ 1233.12 [Reserved]

§ 1233.13 May the Director waive any provision of these regulations?

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

Signed at Washington, D.C. this 8th day of June, 1983.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 83-16385 Filed 6-23-83; 8:45 am]

BILLING CODE 6050-01-M

federal register

Friday
June 24, 1983

Part XVII

Environmental Protection Agency

Intergovernmental Review of the Environmental Protection Agency Programs and Activities; Final Rule and Programs and Activities Eligible for Intergovernmental Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 29, 35, 40, 51, and 255

[OA-FRL-2380-2(a)]

Intergovernmental Review of the Environmental Protection Agency Programs and Activities

AGENCY: Environmental Protection Agency, Office of the Administrator.

ACTION: Final rule.

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

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: John A. Gwynn, Chief, Grants Policy and Procedures Branch (PM-216), Environmental Protection Agency, Washington, D.C. 20460 (202) 382-5268.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3208) the Environmental Protection Agency and 25 other federal agencies published Notices of Proposed Rulemaking (NPRMs) to carry out Executive Order 12372, or notices proposing that their programs not be subject to the Order. Subsequently two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The EPA, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including the comments received by OMB and other federal agencies which we incorporated in our rulemaking docket, the EPA received approximately 160 comments on government-wide issues during the comment period. In addition, the EPA received 42 comments specifically related to the inclusion or exclusion of our programs from the coverage of the Order or other issues pertaining only to our Agency.

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

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

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983).

The EPA's existing requirements and procedures under OMB Circular A-95 will continue in effect through September 30, 1983.

Introduction to the Rules

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

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Directs OMB to revoke OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

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

State Process

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

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

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

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

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

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

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

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

Single Point of Contact

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

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

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

"Accommodate or Explain"

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

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

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

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

Section by Section Analysis

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

Proposed rule (section)	Final rule (section)
29.1	29.1.
29.2	29.2.
29.3(a)	29.3.
29.3(b)	29.7(a).
29.4	29.4.
29.5(a)	29.6(b).
29.5(b)	29.6(d).
29.5(c)	29.6(c).
29.6(a)	29.8(b).
29.6(b)	29.7(a).
29.6(c)	29.8(a).
29.6(d)	Deleted.
29.6(e)	29.9.
29.7(a)	29.10(a).
29.7(b)	29.10(b).
	29.10(c).
29.8	29.11.
29.9	29.12.
29.10	29.13.

Portions of the final rule not listed in this table (§ 29.5, § 29.6(a), § 29.7(b), and § 29.8(c)) are new.

Section 29.1 What is the purpose of these regulations?

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

BILLING CODE 6560-50-M

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 USC §3334)

Section 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review --

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

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

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may

be, and the extent to which such project contributes to the fulfillment of such planning. The comments and the recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

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

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

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

Section 401 of the Intergovernmental Cooperation Act of 1968, as amended, (31 USC 6506)

§6506. Development assistance

(a) The economic and social development of the United States and the

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

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

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local

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

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

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

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

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

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

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

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

Section 29.2 What definitions apply to these regulations?

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

EPA chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." In these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

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

In addition, the agency does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 29.10. The Administrator accepts the state process recommendation or reaches a mutually agreeable solution. If the Agency does not provide an accommodation in one of these two ways, it must provide an explanation. We believe § 29.10 describes sufficiently what is meant by accommodation and that a further definition of the term is not needed.

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

Section 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

This section is the same as § 29.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the federal government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide nonfederal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., EPA source surveillance and enforcement actions in the implementation of federally mandated sanctions). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

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

EPA believes that exclusions proposed in January should continue to be excluded from the listing of programs

and activities which are eligible for selection for a state process. However, in response to comments we reexamined the criteria for exclusion as well as the particular exclusions that were proposed. These criteria and particular exclusions are discussed in more detail in the section of the preamble covering scope issues.

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

Section 29.4 What are the Administrator's general responsibilities under the Order?

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

Section 29.5 What is the Administrator's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked EPA and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. We believe that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the EPA added a new section 29.5, the language of which is derived from section 401 of the Intergovernmental Cooperation Act, to provide that the Administrator, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

Section 29.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** notice prescribed by § 29.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the final rule. OMB previously wrote all Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

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

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 29.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to § 29.6(c) of the final rule specifies that the state must submit to the Administrator with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. This paragraph also allows EPA to establish deadlines for states to inform the Administrator of changes in program selections. The primary reason for this is to avoid delaying the Agency's processing of assistance applications and decision-making on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, we made some editorial changes for clarity.

A number of commenters asked what procedures would apply when a state chooses not to adopt a process under the Order of when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 29.7, discussed below.

Section 29.7 How does the Administrator communicate with state and local officials concerning EPA programs and activities?

The Environmental Protection Agency notifies the state process about a proposed action concerning a program or activity selected for the state process. The notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process, and the single point of contact could be the information channel for this purpose. EPA need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how EPA communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. We will carry out our responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct communication (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identify who to contact for more information.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. EPA must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. We may also take the

initiative at any time to contact any interested person or entity about an EPA program or activity. Further, we need not rely on the state process or the single point of contact to bring about this communication or consultation.

Section 29.8 How does the Administrator provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 29.6(c) of the NPRM (redesignated § 29.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Administrator would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. They requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response, EPA has decided to lengthen the comment period to 60 days in all cases (including interstate matters), except for federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

Paragraph (b) of this section is derived from § 29.6(a) of the NPRM. The provisions of § 29.8 apply to cases in which review, coordination, and communication with the Environmental Protection Agency have been delegated. Paragraph (b) is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

The Administrator will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Agency will provide notice, including any adjustment to the comment period that may be necessary, to directly affected state, areawide, regional and local entities regarding the proposed action. Because paragraphs (a) and (b) now provide that the Administrator will establish this starting date, the language of the NPRM permitting the Administrator to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Administrator will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

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

Paragraph (e) of § 29.6 of the NPRM has been dropped. A new § 29.9 of the final rule describes how the Administrator receives and responds to comments.

Section 29.9 How does the Administrator receive and respond to comments?

This new section replaces § 29.6(e) of the NPRM and elaborates in substantially greater detail the Administrator's obligations concerning the receipt of and response to comments. Section 29.6(e) had provided that the Administrator would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

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

In response to these comments, and consistent with the amended Executive Order and EPA's decision to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, we have made substantial changes. Nonetheless, the concept of the single point of contact is being retained.

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

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

Paragraph (A) obligates the Administrator to follow the "accommodate or explain" procedures of § 29.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Agency.) If these conditions are not met, the Administrator will consider all comments received, but the "accommodate or explain" obligation will not apply.

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

The Agency's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out our "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, we will respond as provided in § 29.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from EPA under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the EPA.

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

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

In paragraphs (c) and (d), we provide for response to comments where there is not state process, or when a program was not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, the state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency. EPA is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular EPA program or activity.

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

The Environmental Protection Agency recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly; we do not believe it is appropriate to impose specific regulatory requirements regarding administrative details. Each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, EPA expects the applicant to forward those comments with its application to the Agency. However, this does not obviate the necessity for transmitting the state process recommendation to the EPA through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the federal government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by EPA.

Section 29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

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

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, § 29.10(a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that EPA may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, EPA will always send a written explanation of the nonaccommodation.

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

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

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

Section 29.11 What are the Administrator's obligations in interstate situations?

While this section is based on § 29.8 of the NPRM, one feature—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days, except for noncompeting continuation awards.

EPA received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them. We do not believe that it is necessary to provide a procedure for resolving interstate conflicts. It is clearly in our interest to have affected states mutually agree on EPA's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, we will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Environmental Protection Agency believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, § 29.11(a)(3) now specifically mentions designated areawide entities as being among those which the EPA will make efforts to notify in interstate situations. OMB will periodically provide us with a list of designated interstate areawide entities. Section 29.11(a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by us if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

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

Section 29.12 How may a state simplify, consolidate or substitute federally required state plans?

This section is unchanged from the NPRM; however, we did receive a number of comments on it. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Environmental Protection Agency had little discretion in developing this provision. In addition, EPA is obligated to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be approved.

One commenter recommended that an appeals process be established to deal with situations where federal agencies disapprove modified state plans. The EPA believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, EPA will work with states during the review process to resolve problems that could impede approval.

A few commenters recommended that there be a federal "single point of contact" for state plans or other purposes. We believe this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, EPA and other federal agencies will each designate a focal point with whom states can contact on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, EPA will not develop model formats, since formats developed as models for the voluntary use of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for appears elsewhere in today's Federal Register and will be updated periodically.

Section 29.13 May the Administrator waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Environmental Protection Agency is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provision of these regulations. If EPA uses the emergency waiver provision, we will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decision making concerning the matter about which the waiver was used. In addition, EPA will keep records of all situations in which the emergency waiver was used.

Other Comments

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

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

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

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

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

Scope

A few commenters specifically objected to this Agency's exclusion of certain plan and permit programs from the Order's provisions for interstate situations. We have retained these exclusions in our final rule and want to clarify our reasons for so doing.

All section 110(a) State Implementation Plans (SIP's), and revisions thereto, are state-developed and undergo an extensive intergovernmental review prescribed by sections 110(a), 121, 126, and 174 of the Clean Air Act before they are adopted. EPA's regulation, 40 CFR Part 51 (§ 51.4 and Subpart M) implements those requirements. They exist because most section 110(a) SIP's have an interstate impact.

A SIP or revision issued under section 110(c) of the Clean Air Act is one that EPA must develop and issue *in lieu* of a state's plan or portion thereof, when the state's is found inadequate. A federally promulgated SIP under section 110(c) not only considers the pertinent results of the state's section 110(a) process, but is also subject to the Administrative Procedure Act requirements for public comment and review. To subject such a federal action to an additional, duplicate process would further delay implementing a necessary environmental control plan mandated by Congress.

Our reason for excluding certain federally issued permits that may have an impact on interstate areas are much the same. Each permit program's regulation implements specific requirements for public input before an EPA final decision or action. To require another intergovernmental review and consultation system is unnecessary. Our program specific statutes and implementing regulations provide ample opportunity for notification, consultation, and public comment on permits which may affect an interstate area.

One commenter notified EPA that its state process would require that:

> * * * all state agency applications for any type of Federal assistance, *MUST* be submitted to the State Clearinghouse for a review and comment process * * *. In addition, any Direct Federal Development Project, Environmental Assessment or Impact Statement which affects the State * * *, or has nationwide impact, should also be transmitted to us for review.

The state may include any programs and activities it wishes to review in its own process. The criteria that agencies used allowed certain federal financial assistance programs and direct federal development activities to be excluded. We excluded only those EPA programs and activities which met the general criteria agencies used for class exclusion (training grants, fellowships, technical assistance, advisory services, specialized services, dissemination of technical information, counseling, specific research, development, and

demonstration projects). The separate notice in today's **Federal Register** lists all of the EPA programs and activities included in the scope of the Order.

Conforming Amendments

In the NPRM, we cited other EPA regulations that we expected to amend as part of this final rule. Because the effective date for implementing rules under the Order was extended, we do not need to amend the existing general grant regulation (40 CFR Part 30) and construction grant regulation (40 CFR Part 35—Subparts E and I). EPA is completing new general assistance and construction grant regulations which reflect the new intergovernmental review process. They are expected to be effective by October 1, 1983, as will this final rule.

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

The Environmental Protection Agency has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Agency and allow state and local governments to establish cost effective consultation procedures. For this reason, the EPA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the EPA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

List of Subjects in:

40 CFR Part 29

Intergovernmental relations.

40 CFR Part 35

Air pollution control,
Grant programs—environmental protection,
Indians,
Intergovernmental relations,
Pesticides and pests,
Reporting and recordkeeping requirements,
Waste treatment and disposal,
Water pollution control.

40 CFR Part 40

Environmental protection,
Grant programs—environmental protection,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Research.

40 CFR Part 51

Administrative practice and procedure,
Air pollution control,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Ozone,
Sulfur oxides,
Nitrogen dioxide,
Lead,
Particulate matter,
Hydrocarbon,
Carbon monoxide.

40 CFR Part 255

Waste treatment and disposal,
Intergovernmental relations.

Dated: June 17, 1983.

William D. Ruckelshaus,

Administrator.

1. For the reasons set out in the Preamble, the U.S. Environmental Protection Agency amends Title 40, Code of Federal Regulations, by adding a new Part 29, to read as follows:

PART 29—INTERGOVERNMENTAL REVIEW OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES

Sec.

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

§ 29.1 What is the purpose of these regulations?

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

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

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

§ 29.2 What definitions apply to these regulations?

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"Agency" means the U.S. Environmental Protection Agency (EPA). "Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

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

§ 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

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

§ 29.4 What are the Administrator's general responsibilities under the Order?

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

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

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

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

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

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

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

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

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

§ 29.5 What is the Administrator's obligation with respect to federal interagency coordination?

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

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

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 29.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of EPA programs and activities selected for that process.

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

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

§ 29.7 How does the Administrator communicate with state and local officials concerning the EPA programs and activities?

(a) For those programs and activities covered by a state process under § 29.6, the Administrator, to the extent permitted by law:

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

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

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

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

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

This notice may be published in the **Federal Register** or issued by other means which EPA, in its discretion deems appropriate.

§ 29.8 How does the Administrator provide States an opportunity to comment on proposed federal financial assistance and direct Federal development?

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

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

(2) At least 60 days from the date established by the Administrator to comment on proposed direct federal development or federal financial assistance, other than noncompeting continuation awards.

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

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

§ 29.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 29.10 if:

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

(2) That office or official transmits a state process recommendation for a program selected under § 29.6.

(b) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation. However, if a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

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

(d) If a program or activity is not selected for a state process, the state, areawide, regional and local officials and entities may submit comments either directly to the applicant or to EPA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to EPA by the single point of contact, the Administrator follows the procedures of § 29.10 of this Part.

(e) The Administrator *considers* comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not

required to apply the procedures of § 29.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through the state's single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Administrator, in his or her discretion, deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

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

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

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

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

§ 29.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

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

(2) Notifying appropriate officials and entities in states which have adopted a process and selected an EPA program or activity.

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

(4) Responding in accordance with § 29.10 of this part to a recommendation received from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with EPA were delegated.

(b) The Administrator uses the procedures in § 29.10 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 29.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

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

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

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

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

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

§ 29.13 May the Administrator waive any provision of these regulations?

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

2. For the reasons set forth in the preamble, 40 CFR Parts 35, 40, 51, and 255 are amended as follows:

PART 35—[AMENDED]

Section 35.1620–6 is revised in its entirety to read as follows:

§ 35.1620–6 Intergovernmental review.

EPA will not award funds under this subpart without review and consultation in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

PART 40—[AMENDED]

Section 40.135–1 is amended by removing § 40.135–1(b) and redesignating § 40.135–1(c) as § 40.135–1(b); by amending § 40.135–2 to add a new paragraph (e) to read as follows:

§ 40.135–2 Application requirements.

* * * * *

(e) *Intergovernmental review.* EPA will not award funds under this subpart without review and consultation, if applicable, in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

PART 51—[AMENDED]

§ 51.241 [Amended]

Section 51.241(c) is amended by removing the last sentence, "Attention is directed to Part IV of the Office of Management and Budget Circular A–95 (41 FR 2050) which encourages the designation of established, substate comprehensive planning agencies as the agencies to carry out Federally assisted or required areawide planning."

§ 51.248 [Amended]

Section 51.248(b) is amended by removing the last sentence, "The provisions of items 3a through d, Part IV of the Office of Management and Budget Circular A–95 shall be considered in the preparation of memoranda of understanding."

Section 51.251 is revised in its entirety to read as follows:

§ 51.251 Conformity with Executive Order 12372.

The organization responsible for developing the state implementation plan revision shall submit a draft of any major implementation plan revision including any of the six elements listed in § 51.244 to the state process, if one has been designated by the state under Executive Order 12372, "Intergovernmental Review of Federal Programs" (47 FR 30959, July 16, 1982) as amended April 8, 1983 (48 FR 15587, April 11, 1983) for review and comment for a period of 60 days. The draft plan or portions thereof, shall be submitted to the state process either prior to or concurrent with announcement of public hearings on the plan. Comments received from the state process within that 60-day period shall be considered. The organization initiating the plan revision shall retain copies of these comments for inspection by the Administrator and the public.

§ 51.252 [Amended]

Section 51.252(b) is amended by removing the words "in the A–95 clearing house" and adding, in their place, "from the state process designated under Executive Order 12372".

PART 255—[AMENDED]

§ 255.2 [Amended]

Section 255.2 is amended by removing the words "OMB Circular A–95 Part IV

of Attachment A" and adding in their place, "40 CFR Part 29 of this chapter".

§ 255.20 [Amended]

Section 255.20 is amended by removing the words "the chief executives of all agencies designated pursuant to OMB Circular No. A–95, and with" and adding in their place, "regional and areawide planning agencies,".

§ 255.23 [Amended]

Section 255.23(a) is amended to remove the words, "A–95 clearinghouses" and adding, in their place, "agencies and the state process under Executive Order 12372".

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