DR 82-21 - A-95 Review Procedure Revision.

ACTION

COMMITTEE		DATE
M.A.P.C.	approve	8-12-82
B.C.C./~~B. CO. C.~~	Approved	9-7-82
B. Co. C.	Approve Sub. To Condition	9-22-82
MAPC	(off agenda item) reaffirm 8/12/82 action	9/22/83
MAPC	(off the agenda item)	10/20/83

See also DR83-23

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE November 1, 1983

TO Robert A. Lakin, Director of Planning
(through Jack H. Galbraith, Chief Planner)

FROM Arthur D. Chambers, Senior Planner

SUBJECT A-95 Files

Due to the termination of the OMB A-95 Review procedure on September 30, 1983, and the decision of the State to not implement a new review procedure, I intend to box most of my A-95 files and move them to the 9th floor.

It is my intent to discard all A-95 case files, miscellaneous correspondence, report of grants made, etc. I will keep one copy of memos sent to the MAPC summarizing each review, the log sheets and selected copies of "How to Do A-95".

The case files, miscellaneous files, etc., stored on the 9th floor can be discarded December 31, 1984, in my opinion. I will set up a DR file for the MAPC memos, log sheets, etc.

If you approve of the above procedures, I will begin boxing up the files next week.

Arthur D. Chambers
Senior Planner

APPROVED:

ORIGINAL SIGNED SEE DR-

Robert A. Lakin
Director of Planning

ADC:jps

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612

JOHN B. KEMP, Secretary of Transportation   JOHN CARLIN, Governor

October 13, 1983

Mr. Robert Lakin, Director
Wichita-Sedgwick County Metropolitan Area
Planning Department
City Hall, 10th floor
455 North Main Street
Wichita, Kansas 67202

Dear Sir:

In his letter of October 10, 1983, Mr. Lynn Muchmore, Director, Division of the Budget, announced that the A-95 Review System was terminated effective September 30, 1983. In accordance with this action, Kansas Department of Transportation (KDOT) has discontinued the practice of requesting A-95 review for transportation construction projects; however, we will continue to request your input on projects requiring Environmental Assessments and/or Environmental Impact Statements in accordance with other environmental laws and regulations. This letter pertains to only transportation construction projects.

This action will have little effect on the amount of communication KDOT will have with most regional clearinghouses because of the use of agreements in the A-95 review process during the past ten years. It should be noted that the Federal Highway Administration has also excluded the same type of construction projects listed on these agreements from their review process.

If you have any questions, please feel free to contact A. H. Stallard at (913) 296-3531.

Very truly yours,

W. H. WRIGHT
for STATE TRANSPORTATION ENGINEER

cc: Directors of Divisions
Bureau Chiefs
District Engineers
Federal Highway Administration
Lynn Muchmore, Director, Division of the Budget
Att: Pat Schafer
Dave Comstock, Bureau of Rural & Urban Development

RECEIVED
OCT 1 8 1983
METROPOLITAN PLANNING
ROUTE

September 26, 1983

Division of the Budget
% Pat Schafer
Room 152-E
State Capitol Building
Topeka, Kansas 66612

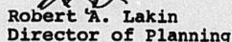
Re: A-95-Review System in Kansas

Dear Pat:

On September 22, 1983 the Wichita-Sedgwick County Metropolitan Area Planning Department considered Lynn Muchmore's letter dated September 13, 1983 regarding the Division of the Budget's intent to terminate the A-95 Review System. Their action was to unanimously reaffirm their recommendation that there is a need to have some type of review process for applications for federal assistance or direct federal development. They felt it has been beneficial in the past to have a review system and that some form of review should be retained.

There was discussion about the effectiveness of the review system. Although most cases are "routine" and do not receive negative comments, the review system does provide a means to notify many agencies, organizations and individuals of potential projects. In some cases those groups would not have been aware of a potentially duplicative or adverse project without the review system. Therefore, it was felt that the State should proceed with submitting a review system to the federal government.

Sincerely,



Robert A. Lakin
Director of Planning

RAL:ADC:jps

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE September 21, 1983

TO Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT DR82-21 A-95 Review Procedure Revision

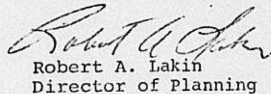
On August 5, 1982, I sent a memo (copy attached) to you outlining the Federal government's intent to revise the A-95 Review process. Your action was to approve my recommendation that there should be some type of review process and that MAPC should be involved.

During the past year, the State's Division of the Budget has held meetings to discuss what type of process should be implemented. Some of the Regional Planning Commissions have expressed a strong interest in retaining some type of a review process, especially for "physical" type projects. Some State agencies, particularly KDOT, feel that a review process is not needed.

The purpose of the meetings was to draft a review process that would be forwarded to the Governor and then on to the Federal government for use in reviewing grant applications. While there has been some work done by some Regional Planning Commissioners proposing a review process, the State Division of the Budget has not prepared a proposed review process.

It is our understanding that unless the State submits a proposed review process to the Federal government by September 30, 1983, there will not be any type of review process for applications from Kansas. A copy of a letter from the Director of the Budget is attached for your information. The letter states that they intend to terminate the A-95 Review process as of September 30, 1983.

As I indicated in my earlier memo, I feel that it would be beneficial to have some type of review system. The MAPC should have the opportunity to review projects that would have a direct impact on local land uses. Therefore, I would recommend that the MAPC reaffirm the previous recommendation and authorize me to forward those recommendations to the Director of the Budget.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachments

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
DIVISION OF THE BUDGET

RECEIVED
SEP 20 1983
METROPOLITAN PLANNING
ROUTE ☐
☐

JOHN CARLIN,
Governor

LYNN MUCHMORE,
Director of the Budget

Room 152-E
State Capitol Building
Topeka, Kansas 66612
(913) 296-2436

September 13, 1983

TO REGIONAL PLANNING COMMISSIONS, MAYORS, COUNTY CLERKS AND STATE AGENCIES

This letter is to inform you that the Division of the Budget intends to terminate the A-95 Review System in Kansas effective September 30, 1983. Our analysis of A-95 reveals that review has had no significant impact upon federal assistance. In addition, the process has duplicated other local and state mechanisms currently in place in the State of Kansas that provide for ongoing local and state government coordination and review of proposed federal assistance.

We do not feel that it is necessary to designate a special state process to take the place of the A-95 Review System at this time. There are other review mechanisms in place which should be sufficient to meet local and state needs.

As an example of review mechanisms that will continue, the Department of Transportation coordinates projects with other state agencies such as the Kansas Historical Society, Kansas Fish and Game, and Kansas Department of Health and Environment to satisfy requirements of the National Environmental Policy Act of 1969 and the Historical Preservation Act. Construction projects originated and coordinated by local governments should not require a special process of intergovernmental review because local elected officials, engineers and planning staff are already involved. Notwithstanding termination of the A-95 process, the Department of Transportation will continue to request review through regional clearinghouses of all projects requiring an environmental impact statement. The Department of Transportation recognizes the need for intergovernmental review of these projects since they usually require a substantial amount of additional right of way and could affect local governmental planning. Coordination of Department of Transportation annual work plans with metropolitan planning organizations will continue.

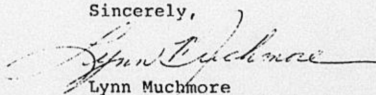
Another example is the regular established public input procedures maintained by the Department of Social and Rehabilitation Services. State public hearings are held monthly throughout the state. Open meetings are held in Topeka with telephone conference call hook-ups allowing for citizen and local government input in the 17 SRS area offices. The July, August, and September meetings are designed specifically for review of block grant proposals. In addition to public notices which appear in the Kansas Register outlining issues to be addressed at the hearings, any interested citizen, local government, or other interested group can request that their name be on an open meeting mailing list to receive minutes of the SRS open meetings, including the block grant proposals. Public input and participation in approval of the block grant proposals are also obtained through various SRS citizen advisory groups.

It is our conclusion that the old A-95 Review System required an unwarranted amount of state and local staff time given the small number of cases in which a reviewed project received negative comments or was changed or deleted because of this cumbersome review process.

The primary value of that system seems to be one of providing information regarding grant applications. It is felt that this same information and opportunity to comment on projects is available in existing local and state review and public comment mechanisms which are currently in place and will continue to exist after the expiration of the A-95 Review System.

I invite your comments related to this statement of intent. This letter has been sent to each of the established Regional Planning Commissions, the governing bodies of elected officials in the counties and municipalities and the chief administrative officers of major state agencies. Please send written comments to Pat Schafer, Division of the Budget, 152-E, Statehouse, Topeka, Kansas 66612.

Sincerely,



Lynn Muchmore
Director of the Budget

LRM:dh

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 5, 1982

TO Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT A-95 Review

On July 14, 1982, President Reagan issued an Executive Order that rescinds the requirement for A-95 Reviews on applications for federal funding of various projects and programs. The Order institutes a new policy that allows state governments to establish their own process for reviewing requests for federal financial assistance and direct federal development activities. Local agencies or organizations may be designated by the State as local reviewers for all or some applications. States, who must consult with local governments, have until April 30, 1983 to develop their own rules, regulations and procedures for review of applications for federal assistance and direct federal development activities. Current federal procedures listed in OMB Circular A-95 shall continue in effect until the new rules, regulations and procedures are adopted. Federal agencies would be required to follow the new State process to determine local interest and try to accommodate State and local concerns in proposed programs and projects.

It is our understanding that the Order requires that one of the following will occur:

1. The State totally assumes responsibility for review of federal assistance requests and direct federal development.

2. Designation by the State of a substate or local agency as an area planning organization responsible for review of federal assistance requests and direct federal development.

3. No review at all.

If option 1 or 2 is selected, new rules, regulations and procedures are to be developed by the State and submitted to the Federal Office of Management and Budget (OMB) for approval. OMB will maintain a list of State and local agencies designated by the State to review and coordinate proposed federal assistance and direct federal development. The revised rules, regulations and procedures will become effective on April 30, 1983.

As a result of the Executive Order, State and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Through the City and County Commission request the State to designate MAPC as the area planning organization to perform the review for those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form.

2. Through the City and County Commission request the State to assume total review responsibility.

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

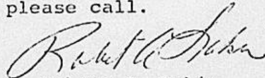
In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs, such as aging, substance abuse, CETA, etc., could be handled by a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

Even though the current A-95 review process in Sedgwick

County is somewhat of a routine matter, I feel that there is a definite need for some agency or organization to have the authority to review and coordinate applications for various programs and projects. For those programs and projects that would have a direct affect on local land uses, such as sewers, streets, rural water districts, housing, etc., I feel that the MAPC is the appropriate body to review requests for federal assistance. Programs and projects of a social nature (CETA, aging, drug abuse, etc.), could be passed or handled by a local advisory board that is already established and acting as a coordinating organization, such as the Alcohol and Drug Abuse Advisory Board.

I would recommend that the MAPC request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize me and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

If you have any questions, please call.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachment
cc: Board of City Commissioners
E. H. Denton, City Manager
Wayne Isaac, Federal Aid Coordinator
Sedgwick County Commissioners
Forest Tim Witsman, County Department of Administration

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE September 21, 1983

TO Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT DR82-21 A-95 Review Procedure Revision

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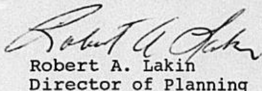

Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachments

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
DIVISION OF THE BUDGET

RECEIVED
SEP 20 1983
METROPOLITAN PLANNING
ROUTE ☐
☐

JOHN CARLIN,
Governor

LYNN MUCHMORE,
Director of the Budget

Room 152-E
State Capitol Building
Topeka, Kansas 66612
(913) 296-2436

September 13, 1983

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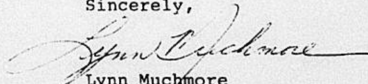
Sincerely,



Lynn Muchmore
Director of the Budget

LRM:dh

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

RECEIVED
MAY 3 1983
DIVISION OF BUDGET
STATE OF KANSAS

APR 28 1983

MEMORANDUM TO STATE E.O. CONTACTS
OMB STATE NETWORK

FROM: JAMES F. KELLY
DEPUTY ASSOCIATE DIRECTOR
MANAGEMENT REFORM DIVISION

SUBJECT: CHANGES IN IMPLEMENTATION SCHEDULE, E.O. 12372

As you all may know, several significant changes in the implementation of E.O. 12372, "Intergovernmental Review of Federal Programs," have occurred recently. The purpose of this memorandum is to provide a chronology of past and future events which have a direct bearing on state and local E.O. implementation, and to transmit copies of related notices. The various steps and proposed changes listed below respond to your numerous comments as well as to those from the governors, Congress, and other interested parties:

- April 8: President signed amendment (attached) to E.O. 12372 which extends the effective date of federal implementing regulations to September 30, 1983. The amendment also adds a citation of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 to the laws to be implemented by E.O. 12372 (published in the 4/11 Federal Register).

- April 11: Governors received mailgram from Director Stockman (attached) which announced extended effective date, public meeting (5/5), extension of public comment period (5/19), and retention of A-95 implementing regulations until 9/30/83.

- April 21: Federal Register notice (attached) on 5/5 public meeting to be held in GSA Auditorium, 18th & F Streets, beginning at 9:30 a.m. on Thursday, May 5, 1983. Areas of potential change are also listed, which include:

  - Program coverage issues
  - Role of areawide agencies
  - Role of Single Point of Contact
  - State/local consensus building

- May 5: Public meeting to discuss areas of potential change.

- May 19: Reopened public comment period closes.

- No later than June 30: Final federal regulations and program/activity "menu" published.

- June 30 - September 30: State and local officials can prepare their official processes with full knowledge of federal implementing regulations and program scope.

- No later than September 30: Governors to notify OMB of official processes. Federal regulations take effect on 9/30, replacing A-95 regulations.

(over)

I appreciate whatever assistance you can provide both in "getting the word out" to all interested parties in your states and localities and in ensuring that we receive your comments by May 19. I also urge you to attend the May 5 public meeting since it offers an opportunity not only to comment for the record, but also to discuss various options for change. This will be the final public meeting on the E.O. hosted by the federal government at which regulatory and program coverage changes can still be discussed and considered.

Lastly, I want to inform you of a change in my responsibilities. I am now Deputy Associate Director of the Management Reform Division. This Division was recently created as a means to institutionalize our recent intergovernmental reforms (such as the block grants) and to strengthen the Administration's effort in federal management reform, much of which (such as cash management) have significant intergovernmental aspects.

Let me reassure you that OMB's commitment to Federalism and its implementation, through E.O. 12372 and other reforms, is strengthened through this restructuring. Please contact Winnie Austermann, OMB Intergovernmental Liaison, at (202) 395-6104, if you have any questions.

Attachments

federal register

Monday
April 11, 1983

Part III

The President

Executive Order 12416

Intergovernmental Review of Federal Programs

Office of Management and Budget

Intergovernmental Review of Federal Programs; Notice of Changes in Implementation

Federal Register
Vol. 48, No. 70
Monday, April 11, 1983

Presidential Documents

Title 3—

The President

Executive Order 12416 of April 8, 1983

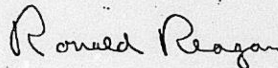
Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

Section 1. The preamble to Executive Order No. 12372 of July 14, 1982 is hereby amended by inserting, after the words "42 U.S.C. 4231(a))", the following phrase: ", Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

Sec. 2. Section 5(b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

Sec. 3. Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984".



THE WHITE HOUSE,
April 8, 1983.

[FR Doc. 83-9671
Filed 4-8-83; 12:03 pm]
Billing code 3195-01-M

OFFICE OF MANAGEMENT AND BUDGET

Intergovernmental Review of Federal Programs; Implementation of Executive Order 12372

AGENCY: Management Reform Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice of implementation changes.

SUMMARY: Executive Order 12372, "Intergovernmental Review of Federal Programs," was signed by President Reagan on July 14, 1982. Section 5 of the Order called for final agency rules effective April 30, 1983. Based on numerous public comments on agency proposed rules requesting more lead time for state and local implementation, today's Federal Register includes an amendment to this Order to change the effective date for the final rules to September 30, 1983. In addition, final rules will be issued by June 30, 1983 to allow at least 3 months lead time. In accordance with Section 7 of E.O. 12372, regulations implementing former OMB Circular A-95 will remain in effect until September 30, 1983.

Another public meeting to discuss contemplated, possible changes in agency proposed rules in response to public comments will be announced shortly.

Dated: April 8, 1983.

Harold I. Steinberg,

Associate Director for Management.

[FR Doc. 83-9673 Filed 4-8-83; 12:09 am]

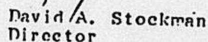
BILLING CODE 3110-01

APR 8 1983

MAILGRAM

Honorable Scott M. Matheson
Governor of Utah
Salt Lake City, Utah 84114

The President amended Executive Order 12372, "Intergovernmental Review of Federal Programs," extending the date upon which the new rules and regulations implementing the Order take effect from April 30, 1983 to September 30, 1983. This responds to requests for more lead time for state and local implementation planning. The public comment period on agency proposed regulations will last until May 19, 1983. During this period, a public meeting covering contemplated rule changes will be held on May 5, the details of which will be announced in the Federal Register very soon. Final rules will be published by the agencies no later than June 30, 1983, allowing 3 months for state and local governments to prepare their official processes after federal regulations and program coverage are finalized. The regulations which were adopted under A-95 will remain in effect until September 30, 1983.



/s/
David A. Stockman
Director

Proposed Rules

Federal Register
Vol. 48, No. 78
Thursday, April 21, 1983

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

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, Intergovernmental Review of Federal Programs; Public Meeting and Reopening of Comment Period

AGENCY: Office of Management and Budget; in conjunction with the following Departments: Agriculture, Commerce, Defense (including the Corps of Engineers), Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Treasury; and in conjunction with the following agencies: ACTION, Environmental Protection Agency, Equal Employment Opportunity Commission, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Office of Personnel Management, Postal Service, Small Bussiness Administration, Tennessee Valley Authority, and the Veterans Administration.

ACTION: Notice of public meeting and reopening of public comment period.

SUMMARY: This document announces reopening of the public comment period for 28 documents previously published concerning the implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs." A second public meeting has been scheduled.

The comment period is being reopened to allow the public greater time to review the various policies set forth in the proposed rules and to consider several areas of proposed change to the rules resulting from the amending of the Executive Order to include an additional statutory reference.

DATES: The public meeting will be held beginning at 9:30 A.M. on May 5, 1983. The reopened comment period on the notices of proposed rulemaking and the notices of proposed program exclusions will close on May 19, 1983.

ADDRESSES: The public meeting will be held at the GSA Auditorium, 18th and F Streets, N.W., Washington, D.C. Comments on the proposed rules during the reopened period should be sent to the addresses which agencies listed for receipt of comments in their previously published notices.

FOR FURTHER INFORMATION CONTACT: Walter S. Groszyk Jr., Office of the Deputy Associate Director for Management Reform, Office of Management and Budget, Room 10208, 726 Jackson Place N.W., Washington, D.C. 20503. Telephone (202) 395-3050. (Note: The Office of the Deputy Associate Director was recently reorganized and retitled from the Office of the Deputy Associate Director for Intergovernmental Affairs that appeared in earlier notices.)

The individual department and agency notices previously published also contain the names and addresses of individuals who can be contacted for further information on the notices.

SUPPLEMENTARY INFORMATION: Executive Order 12372, "Intergovernmental Review of Federal Programs," was signed by President Reagan on July 14, 1982. On January 24, 1983, all but two of the federal departments and agencies listed above published in the Federal Register either a notice of proposed rulemaking or a notice proposing their programs not be subject to the provisions of the Executive Order.The Department of Housing and Urban Development published a notice of proposed rulemaking on February 23, 1983 and the Tennessee Valley Authority published its notice of proposed rulemaking on March 4, 1983. A public meeting on the proposed rules was held on March 2, 1983. The Executive Order established a date of April 30, 1983 for implementing the policies of the Order. This effective date was extended by the President to September 30, 1983; 48 FR 15587, April 11, 1983.

Reopening of the Comment Period

While the public comment period of most agencies ended on March 10, 1983, the public comment periods for the Department of Housing and Urban Development and the Tennessee Valley Authority ended on April; 11, and April 4, 1983, respectively. The Department of the Interior on March 24, 1983 extended the public comment period on part of its notice until April 1, 1983. The federal departments and agencies listed above are reopening the comment period for all notices effective immediately. The comment period will now end on May 19, 1983. Any comments that were received subsequent to the end of the comment period and prior to this reopening of the comment period will be included in the agency dockets and considered.

Date, Time, and Location of Public Meeting

A public meeting will be held on May 5, 1983 to discuss possible changes to the proposed policies presented in the notices of proposed rulemaking. The meeting will be held in the Auditorium of the General Services Administration Building, 18th and F Streets, N.W., Washington, D.C., beginning at 9:30 A.M. The public meeting will be structured to allow federal officials to outline proposed changes, to discuss these changes with parties attending the public meeting, and to receive the views of the public on the proposed rules and changes contemplated to the proposed rules. If any additional federally-prepared material on proposed changes is given to those attending the public meeting, that material will also be provided to all parties previously submitting comments on the content of the proposed rules. Any additional material can also be obtained by requesting such from Walter Groszyk whose address appears above.

Areas of Change to the Proposed Rules

These changes to the proposed rules are intended to reflect the April 8, 1983, amendment of the Executive Order that cites additional statutory authority for the policies of the Order. These changes also respond to numerous commenters who sought clarification of whether and how the proposed rules would implement the provisions of Section 401 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4231, and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334. The changes would encompass the entirety of Section 401. These changes do not represent final decisions on how best to carry out the amended Executive Order or to respond

to the public comments, but are possible solutions to concerns raised by the commenters and to the citation of additional statutory authority. Further public comment is sought. Alternatives to these possible solutions are also welcome. The section of the proposed rules affected by these possible solutions is identified in parentheses.

A number of other changes to the proposed rules are contemplated based on the many public comments received to date. These contemplated changes are not discussed in this notice. Public comment continues to be solicited on all of the previously published notices. Specific suggestions on the most effective means for linking assistance applications with comments by state, local, regional, or areawide entities would be particularly helpful.

Federal Agency Programs and Activities to be Covered: Agencies proposed program exclusions for public comment based on a set of government-wide criteria. Although some commenters were satisfied with the proposed exclusions and inclusions, many commenters wanted all programs included or fewer exclusions. —The scope of programs and activities covered by th Executive Order would be broadened to reflect the provisions of section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. (—.3)

Federal Agency Responsibilities for Programs or Activities not Selected for Review: A few commenters wanted local governments to be able to select programs not included in the state process. —The manner of selecting programs or activities would be clarified, including an indication of federal responsibilities to local, regional, or areawide entities where programs or activities are not selected for inclusion under the state process. (—.5)

The Role of Areawide Agencies in Intergovernmental Review: Several commenters sought clarification on whether the proposed rules implemented all of Title IV of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. —The rules would be changed to implement the applicable provisions of these two Acts. Section 204 allows areawide agencies established by state or local law to review and comment on applications for federal assistance for planning or construction of certain type facilities or utilities. For those programs or activities subject to areawide review which the state has included under its process, the state process would be required to pass through all comments from areawide agencies that differed from the state process recommendation. In the absence of a state process and for those programs and activities not included within a state process, applicants must provide a 60 day period for areawide agency review and comment, with comments then considered and taken into account by the appropriate federal agency. The federal agency would "accommodate or explain" any consensus comments from an areawide agency that were sent through the state single point of contact, even for programs and activities not included under the state process. (—.6)

Role of the Single Point of Contact: Many commenters did not understand the proposed role of the single point of contact or wanted it changed. —The role and responsibility of the single point of contact would be clarified. The single point of contact would transmit official, priority state process views. (The concept of priority views is being proposed as a means of highlighting for federal agency attention those recommendations involving areas of importance to state and local elected officials.) In addition, to assure federal agency awareness of views differing from a state process recommendation, the single point of contact would pass through to the federal agency all differing views, of state, local, regional, or areawide entities and officials. The single point of contact could also transmit a consensus of state, local, areawide, or regional views, as appropriate. (—.6)

Consensus Building between State and Local Officials: Comments were received suggesting that the state process foster consensus building between state and local officials. —A federal department or agency would be required to accommodate or explain (in cases of nonaccommodation) only those views transmitted by a single point of contact that represent either a state process recommendation or a consensus of state, local areawide, or regional views, as appropriate, in the absence of a state process recommendation. Differing views passed through by the single point of contact would be considered, but the "accommodate or explain" obligation would not apply. (—.7)

Office of Management and Budget

Notices published on January 24, 1983, 48 FR 3074 and 48 FR 3079.

Dated: April 15, 1983.

Harold I. Steinberg,

Associate Director for Management.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015, 1901, 1942, 1944, 1948, and 1980, 36 CFR 219, 7 CFR Parts 225, 227, 246, 247, 250, 253, and 282.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3082; proposed rule related notice published on January 25, 1983, 48 FR 3375.

Dated: April 15, 1983.

Richard E. Lyng,

Deputy Secretary, Department of Agriculture.

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Parts 303, 307, and 309, 15 CFR Parts 13, 905, 920, 921, 923, 930, 931, and 2301, 50 CFR Part 401.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3096.

Dated: April 15, 1983.

Malcolm Baldrige,

Secretary of Commerce.

DEPARTMENT OF DEFENSE

32 CFR Part 243.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3106.

Dated: April 13, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

Department of the Army;

Corps of Engineers

33 CFR Part 384.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3111.

Dated: April 14, 1983.

Paul F. Kavanaugh,

Colonel, Corps of Engineers, Executive Director of Civil Works.

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 79.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3120.

Dated: April 15, 1983.

T. H. Bell,

Secretary of Education.

DEPARTMENT OF ENERGY

10 CFR Parts 600 and 1005.

Notice of Proposed Rulemaking published on January 24, 1983, 48 FR 3130.

BARTON COUNTY:
Claflin
Ellinwood
Great Bend
Hoisington
Olmitz
Pawnee Rock
Susank
Albert
Galatia

EDWARDS COUNTY:
Belpre
Kinsley
Lewis
Offerle

RUSH COUNTY:
Alexander
Bison
La Crosse
Liebenthal
McCracken
Otis
Rush Center
Timken

STAFFORD COUNTY:
Hudson
Macksville
Radium
St. John
Stafford
Seward

PAWNEE COUNTY:
Burdett
Garfield
Larned
Rozel

GOLDEN BELT ASSOCIATION OF LOCAL GOVERNMENTS
P.O. Box 906
PRATT, KANSAS 67124
Phone 316/672-5541

April 11, 1983

The Honorable John Carlin
Governor of Kansas
State Capitol
Topeka, Kansas 66612

Dear Governor Carlin:

The Golden Belt Association of Local Governments supports maintaining a review and comment on project applications assisted in funding by the Federal and State governments.

During the last nine years, local elected officials in our five-county area have, through the auspices of our Association of Local Governments, had an opportunity to review and comment on several million dollars of federally funded projects.

We feel that the process has been extremely valuable to date and should be continued for the following reasons:

1. Information -- The notification and discussion facets of the process have revealed types of projects and funding opportunities that many of our communities were not aware of and that have resulted in a greater participation in Federal and State programs by our local governments.

Another aspect of information has been a greatly increased awareness of activities that has strengthened coordination efforts. We have utilized a "Comment Sheet" process whereby local agencies potentially affected by projects are notified. This has ensured that any local budgeting or scheduling obligations are known and can be discussed further locally, if necessary.

2. Project Quality and Improvements -- A-95 was criticized by some because a large portion of the projects reviewed were "endorsed" and some saw this a "rubber stamping." Nothing could be further from the truth. While we are desirous of our share of federal and state tax dollar return into our area, we take our role as public representatives very seriously and want to see public dollars spent efficiently and for projects that serve the public interest in a well-planned manner. Thus, we have given careful scrutiny to all of the

projects reviewed and in many cases have suggested and secured alterations and improvements before giving endorsement. We have not hesitated to provide negative comments where we felt projects were unnecessary or overpriced or where the best interests of the local government and/or region were not being met.

3. Intergovernmental Access -- The A-95 process "opened the door" to allow participatory involvement by local governments in federal and state policies and issues. In many cases the "issue" was larger than the specific "project" under review, i.e., population projections in facility sizing and distribution of funds for nutrition programs for the elderly. The review of Statewide Plans for various functions has also been helpful.

4. Authority -- While the A-95 process is not an approval or denial, it does lend credibility to the policy positions and viewpoint of local governments. Like the open public meetings requirements, it guarantees access to the public decision-making process.

Based upon the preceding reasons, we strongly favor the continuation of a process similar to A-95. We feel that the process should retain a notification and review function and timing as was in A-95. We also believe that, with the transfer of many functions to the State through Block Grants and other mechanisms, it is even more important that State Plans and projects should be included in the review.

The present State-Areawide structure and relationship for carrying out the process is very satisfactory. However, should it require a stronger role by regional clearinghouses up to and including assuming the primary coordinating function, with the State playing a supplementary role, we would support it to maintain this very important intergovernmental process.

Sincerely,

Glen Weldon, Chairman
Golden Belt Association of
Local Governments

GW:vsh

cc: Lynn Muchmore
Alan Conroy
L. L. Oller
James Greenleaf

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
DIVISION OF THE BUDGET

JOHN CARLIN, Governor
LYNN MUCHMORE, Director of the Budget

Room 152-E
State Capitol Building
Topeka, Kansas 66612
(913) 296-2436

Kansas Meeting
on
Presidential Executive Order 12372

April 11, 1983
1:30 p.m.
Room 220-South Capitol Building

I. Introductions

II. Current A-95 Review System

A. State Clearinghouse

B. Regional Clearinghouses

III. Presidential Executive Order 12372

IV. Kansas Alternatives

V. Possible Future Actions

VI. Adjourn

303 East Main Box 664 Chanute, Kansas 66720
Phone 316/431-0080

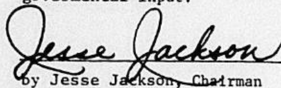
STATEMENT OF THE SOUTHEAST KANSAS REGIONAL PLANNING COMMISSION
RELATIVE TO CONTINUATION OF LOCAL REVIEW OF
APPLICATIONS FOR FEDERAL AND STATE ASSISTANCE

On July 29, 1982, our Commission submitted to the Governor a resolution requesting that the state continue the areawide review process. As stated at that time, our region utilzies the A-95 process extensively and holds public review on all applications on a monthly basis. This process has proved useful to us mainly in terms of its communication value. Through this open discussion, some grant proposals have been improved and some duplication of effort has been eliminated. More importantly, the process has served to inform local officials of work in progress in their region and what opportunities are available. We feel this local review should be encouraged and, in one way, expanded.

While the details can be worked out, we recommend, in general, that the areawide review process should include, at the very least, review of all projects having a capital improvement feature. To give a few examples, this would include housing, water and sewer construction, and all community development and major economic development activities (HUD CDBG, UDAG, and EPA and EDA grants). In addition, we feel that major human service programs (such as funds for the elderly and handicapped, meal programs, etc.) should be reviewed. These programs were part of the original A-95 process and, we feel, should be maintained, despite the origin of the funding. This means that we desire a review whether or not the program is funded directly by the federal government or through a state block grant approach. The need to review the activity remains the same, whether or not the funding source changes.

We feel that such a review process could be established rather easily, utilizing the state A-95 review function in a minimal capacity, if that was desired. The state would, however, have to retain review of those grants occurring in areas not served by a regional planning commission.

We feel a system such as discussed above is workable and is within the intent of the President's Executive Order in terms of maximizing local govermental input.



by Jesse Jackson, Chairman

April 11, 1983
Date

303 East Main Box 664 Chanute, Kansas 66720
Phone 316/431-0080

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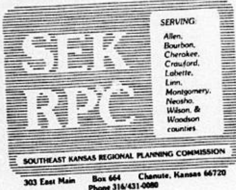
☐

TO: KARPC EXECUTIVE DIRECTORS
FROM: Ethan Z. Kaplan *Ethan*
DATE: April 4, 1983

RE: A-95 Meeting

By this time, you and your Chairman should have received an invitation to the April 11, 1983 A-95 meeting at the Capitol at 1:30 p.m. If you did not receive this, please call Alan Conroy at (913)296-2436, or myself. As we have discussed on the phone, we feel that the State is most willing to continue some form of A-95 Areawide Review, if we show support for it. As we have discussed, the best approach would seem to be to bring a Board Member with you and a written statement. (While the letter does not indicate it, Alan said that he would appreciate written statements from those who are there, as well as others.)

In order to see where we stand and discuss any other business that may come up, we would appreciate you and your delegate attending a work session at 10:30 a.m. prior to the meeting at League Headquarters. (Extra copies of your prepared statement would be appreciated.) I would appreciate it if you could call me and confirm your attendance. It does seem we all generally agree on this issue and hopefully can present a strong case to the Governor. See you on April 11.



Carl Leivo
Central Plains Tri-County
Planning Commission
455 N. Main, 10th Floor
Wichita, Kansas 67202

STATE OF KANSAS

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ROUTE

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

March 31, 1983

Don Gragg, Chairperson
Central Plains Tri-County
Planning Commission
Sedgwick County Courthouse
Wichita, Kansas 67203

Dear Mr. Gragg:

I would like to invite you and the executive director of the Central Plains Tri-County Planning Commission to help formulate the State of Kansas response to President Reagan's Executive Order 12372. This order abolishes the present intergovernmental cooperation process known as the A-95 system.

The meeting will be on Monday, April 11, 1983 at 1:30 p.m. in Room 220-South of the State Capitol Building. Representatives from other regional planning commissions, the League of Kansas Municipalities, Kansas Association of Counties, and selected state agencies have been invited to participate.

The state has the option of withdrawing from the program, modifying or continuing the present system. I hope this meeting will enable all interested individuals to express their viewpoints on this important subject so a consensus can be achieved on behalf of the state.

If you are unable to attend I would be interested in receiving your written comments. Please forward them and any questions you may have to Alan Conroy, Kansas Division of the Budget, First Floor, State Capitol Building, Topeka, Kansas 66612 or phone (913) 296-2436.

I thank you for your participation and interest and I am confident by working together that we can frame an appropriate response to the federal government on this issue.

Sincerely,

JOHN CARLIN
Governor

JC:sr

cc: Robert A. Lakin, 455 North Main, 10th Floor, Wichita, KS

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

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$50 TO $500

Robert Lakin, Secretary
Central Plains Tri-County
  Planning Commission
455 N. Main, 10th Floor
Wichita, KS 67202

John Carlin
Governor

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

December 10, 1982

Mr. Robert Lakin, Director
Wichita-Sedgwick County Metropolitan Planning Commission
City Hall - Tenth Floor
455 North Main Street
Wichita, Kansas 67202

Dear Mr. Lakin:

I have received letters from many regional planning commissions expressing concerns about the President's July 14, 1982 Executive Order rescending the present A-95 program procedures.

Let me assure you that my office has been active in investigating the possibilities of developing a new review process. When the new process is developed, it will be important that we have the participation of both the regional councils and local units of government in coordinating a system that will become not only a communication vehicle, but a tool to continue to enrich local, regional, and statewide planning efforts.

I am awaiting the January 15th issuance of the rules and regulations implementing the President's Executive Order from the Office of Management and Budget before making any final decisions for Kansas. In the meantime, we will be soliciting the input of the area planning commissions and will consider all of the options. I wanted you to be aware of the actions my office is taking. Please feel free to contact my office on this subject.

Sincerely,

John Carlin

JOHN CARLIN
Governor

JC:DM:kmg

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State Capitol
Topeka 66612

John Carlin
Governor

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Mr. Robert Lakin, Director
Wichita-Sedgwick County Metropolitan Planning Comm.
City Hall - Tenth Floor
455 North Main St.
Wichita, Kansas 67202

WEST SEVENTH STREET
TOPEKA, KANSAS 66603
AREA 913 354-9565

League of Kansas Municipalities

Kansas Government Journal

RECEIVED
OCT 1 4 1982
METROPOLITAN PLANNING
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TO: KANSAS RPC/RC Executive Directors

FROM: Chris McKenzie, Attorney and Director of Research

DATE: October 13, 1982

SUBJECT: League's Position on Regional A-95 Review

As you know, we all recently received a copy of an article that appeared in the October 7, 1982 edition of the Daily Reporter concerning modification of the League's 1982-1983 Statement of Municipal Policy with regard to regional A-95 review. In order to clear up any concern that this article may have generated, I wanted to share with you what happened at the conference and the League's current position regarding A-95.

For a number of years the League's policy statement has contained a section, entitled "Regional Agencies," which expressed the League's support for regional planning commissions. That statement read as follows: "I-2b. Regional Agencies. (1) Multi-county regional planning commissions or associations should have governing councils substantially representative of the general governments therein and their elected officials. Such regional agencies should serve as a comprehensive and functional planning and coordinating agency for the area, provide technical and other staff services to its constituent units, and assist in the development of areawide and joint functions through interlocal cooperative agreements. Such agencies should serve as the areawide A-95 clearinghouse. To the maximum extent possible, all functional or single purpose planning activities of regional concern should be under the general umbrella of such regional agencies. Substate service and planning areas of Kansas state government should be geographically and functionally coordinated with such regional agencies.

"I-2b(2). We support legislation specifically providing for such regional agencies, which should be separate from the present joint planning law, broadly written to meet varying area needs, and provide for the determination of council membership and voting power by mutual agreement of the participating counties and cities. We oppose granting to regional agencies the authority to levy taxes; neither should they provide direct services to the public unless authorized to do so by ordinance or resolution of the governing body of the member unit or units of government receiving the service. The state should provide financial assistance to such agencies on a permanent basis."

In preparing a draft of the 1982-1983 policy statement, the League staff recommended insertion of a new section dealing with A-95 review. That language reads: "B-8. Intergovernmental A-95 Review. In light of the President's decision to discontinue the A-95 project notification and review system, effective April 30, 1983, we support the development and implementation of a simplified process for state and regional advisory review of local applications for federal and state financial assistance. Local governments should be involved in the development of the state review and notification procedures. The major objective of such a review process should be to assist public agencies in coordinating their development and service delivery objectives."

At the policy development session at the 1982 League convention (which is an open meeting for proposing revisions to the League's Statement of Municipal Policy), representatives of the cities of Atchison and Haysville recommend that the League's position on regional A-95 review be weakened somewhat. In response to this recommendation, and in recognition that a new section of the policy statement recommends regional advisory review of grant applications, the Governing Body recommended that one sentence in the original policy statement concerning regional agencies be stricken. That sentence (which is underlined in the above excerpt) read: "Such agencies should serve as the areawide A-95 clearinghouse." While some individuals may have viewed this decision as a weakening of the League's policy concerning regional A-95 review, the approval of an entirely new section of the policy statement that endorses state and regional advisory review of grant applications, in light of the President's decision to discontinue the A-95 process, maintains the League's past position of supporting regional A-95 review.

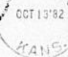
There is obviously some degree of concern about continued RPC involvement in reviewing grant applications. While you may want to discuss these concerns at your upcoming work session in McPherson, the official position of the League regarding regional A-95 review does not appear to have changed.

Please feel free to call me if you have any questions.

CM:gs

League of Kansas Municipalities
112 West Seventh Street

Kansas Government Journal
Topeka, Kansas 66603



Robert A. Lakin, Sec.
Wichita-Sedgwick Co.
Metro-Area Plng. Dept.
455 N. Main--10th Floor
Wichita KS 67202

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE October 14, 1983

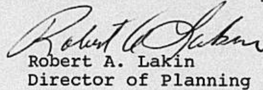
TO Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT A-95 Review Process

Attached is a copy of a letter from Lynn Muchmore, Director of the Division of the Budget, stating that the A-95 Review System in Kansas has been terminated effective September 30, 1983.

Staff will be investigating the possibilities of establishing a new review system over the next few weeks. We will keep you informed of future activity on this issue.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachment

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
DIVISION OF THE BUDGET

JOHN CARLIN,
Governor

LYNN MUCHMORE,
Director of the Budget

Room 152-E
State Capitol Building
Topeka, Kansas 66612
(913) 296-2436

October 10, 1983

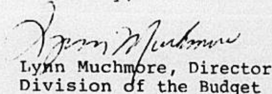
Regional Planning Commissions,
County Commissioners, Mayors
and State Agencies

This letter is to inform you that the A-95 Review System has been terminated in Kansas effective September 30, 1983.

Comments received in response to our notice of intent to terminate A-95 included mixed reviews. A number of local government representatives concurred with the decision to terminate the A-95 Review System and agreed that an additional process was not necessary. Others recommended continuation of some type of information network to promote awareness of federal programs. Many of those who have been actively involved in A-95 and have realized benefits from that process, of course, recommended its continuation.

I am receptive to ideas from groups who want to propose a simplified replacement process that will meet the special concerns of those regions of the state that have ongoing interest in maintaining a review and comment process.

Sincerely,



Lynn Muchmore, Director
Division of the Budget

LM:PS:dj

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State Capitol Building
Topeka, Kansas 66612

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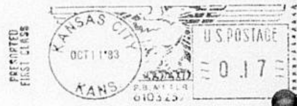


Executive Director
Central Plains Tri-County
Planning Commission
455 N. Main, 10th Floor
Wichita, KS 67202

Bob Lakin

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

October 11, 1982

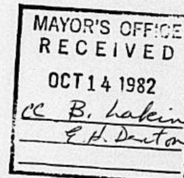
The Honorable Albert Kirk
Mayor, City of Wichita
455 North Main Street
Wichita, Kansas 67202

Dear Mayor Kirk:

In response to your letter of October 5, 1982 concerning the A-95 review process, I appreciate your keeping me advised of the position of the City of Wichita. I have also received letters from numerous regional planning commissions expressing similar concern over the A-95 process.

We, too, are concerned about President Reagan's Executive Order. We will be considering all options very seriously. We will be consulting the Kansas Association of Regional Planning Commission members, members of the Kansas Municipal League of Cities, and the Division of the Budget in developing the State's position, and hope to have our position for future review procedures formulated by late Fall.

Sincerely,



JOHN CARLIN
Governor

JC:NZ:kmg

"All City Commissioners Received"

MAYOR'S OFFICE
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OCT 14 1982
cc B. Lakin
E.H. Denton

FROM Leivo DATE 10/8/82

ADMINISTRATION	ADVANCE PLANS	CURRENT PLANS	GRAPHICS
☒ Lakin	☒ ~~Stockwell~~	☐ Galbraith	☐ Pierce
☐ Walter	☐ Schwartz	☐ Lytle	☐ Commer
☐ Doramus	~~[illegible]~~	☐ Young	☐ Crook
☐ Eubanks	☐ Bechtel	☒ Chambers	☐ Garland
☐ Hanson	☐ Curfman	☐ Fleck	☐ Singhal
☐ Henderson	☐ Dudark	☐ Nagley	☐ Whitney
☐ Lakin, E.	☐ Flynn	☐ Olivarez	☐ —
☐ Nelson	☐ Hart	☐ Shirkey	
☐ Scott	☐ Losew	☐ McDonald	
☐ —	☐ Shen		
	☐ Spain		
	☐ Vinson		
	☐ —		

File.

○ Note & Return	○ Signature
○ Handle	○ Library
○ All Staff	○ Information
○ Comment	○ Files

REMARKS Position taken by KARPC on A-95 + Carlin's reply

T9-105

Kansas A[illegible]ciation of Regional Planning C[illegible]issions

RESOLUTION No 82-2

Task Force on Development of Federal Grant Application Review Process

WHEREAS, on July 14, 1982 President Reagan issued Executive Order 12372 which established a new federal policy of consultation and cooperation with state and local governments in the administration of federal financial assistance and development programs;

WHEREAS, the Executive Order substantially altered the current system of area-wide and state level review of federal grant and development programs under OMB Circular A-95;

WHEREAS, under the A-95 project notification and review system Kansas Regional Planning Commissions conduct reviews of federal grant applications at public hearings, and such reviews significantly contribute to the coordination of planning and development activities within each region;

WHEREAS, Executive Order 12732 provides that states, in consultation with local general purpose governments, are encouraged to develop their own procedures for reviewing and making recommendations on financial assistance and direct developments proposed by the federal government;

WHEREAS, the Kansas Association of Regional Planning Commissions supports the recommendation of the Southeast Kansas Regional Planning Commission that the Governor and the Division of the Budget establish an A-95 review process that continues the use of existing regional clearinghouses;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Kansas Association of Regional Planning Commissions that the Honorable John Carlin, Governor of the State of Kansas, is urged to appoint a special task force to recommend procedures and policies for the implementation

of a federal grant notification and review system involving the regional planning commissions of Kansas.

RESOLVED FURTHER, that the Governor is urged to appoint representatives of the Division of Budget, the Kansas Association of Regional Planning Commissions, the League of Kansas Municipalities, and the Kansas Association of Counties to the task force.

RESOLVED FURTHER, that the federal grant task force be directed to make recommendations to the Governor no later than December 31, 1982 since Executive Order 12372 requires implementation of new consultation procedures no later than April 30, 1983.

RESOLVED FURTHER, that a copy of this resolution be sent to the Honorable John Carlin, Governor of the State of Kansas, and Lynn Muchmore, Director, Division of Budget, Kansas Department of Administration.

I hereby certify that the above resolution was adopted by the Governing Body of the Kansas Association of Regional Planning Commissions on August 27, 1982.

Christopher McKenzie

Christopher McKenzie
Executive Secretary

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

September 21, 1982

Christopher McKenzie
Executive Secretary
Ks. Assoc. of Regional Planning Comm.
112 West Seventh Street
Topeka, Kansas 66603

Dear Mr. McKenzie:

In response to your letter of September 15, 1982 and attached resolution concerning the A-95 review process, I appreciate your keeping me advised of the position of the Kansas Association of Regional Planning Commission. I have also received letters from several of your member organizations expressing concerns over the A-95 process.

We, too, are concerned about President Reagan's Executive Order. We will be considering all options very seriously. We will be consulting your organization and the Division of Budget in developing the State's position, and hope to have our position formulated by late Fall.

Sincerely,

John Carlin

JOHN CARLIN
Governor

JC:kmg

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

October 7, 1982

Robert A. Lakin, Secretary
Central Plains Tri-County
Planning Committee
City Hall - Tenth Floor
455 North Main Street
Wichita, Kansas 67202

Dear Mr. Lakin:

In response to your letter of September 28, 1982 concerning the A-95 review process, I appreciate your keeping me advised of the position of the Central Plains Tri-County Planning Committee. I have also received letters from several other regional planning commissions expressing similar concern over the A-95 process.

We, too, are concerned about President Reagan's Executive Order. We will be considering all options very seriously. We will be consulting both the Kansas Association of Regional Planning Commission and its affiliated members and the Division of Budget in developing the State's position, and hope to have our position formulated by late Fall.

Sincerely,

John Carlin

JOHN CARLIN
Governor

JC:NZ:kmg

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OCT 12 1982
METROPOLITAN PLANNING
ROUTE ☐
☐

October 5, 1982

The Honorable John Carlin
Governor
State of Kansas
State Capitol, Second Floor
Topeka, KS 66612

Dear Governor Carlin:

The Board of City Commissioners of the City of Wichita, Kansas, recently considered President Reagan's Executive Order rescinding OMB Circular A-95 and the options that might be available to the State.

We believe that there is a need for some type of review process below the State level. Applications for federal assistance or development projects undertaken directly by the Federal government should be reviewed.

The City Commission recommends that the Metropolitan Area Planning Commission (MAPC) be designated as the local review agency in Sedgwick County. The MAPC should review projects which affect land use, the provision of utilities, housing and transportation.

There may be other groups in a better position to review education and social programs. We suggest that some formal review procedure be established for education and social programs at the State and local level.

The Commission has authorized the Planning Director and/or a member of the MAPC to work with the State in developing rules, regulations and procedures for review of applications.

Sincerely,

Albert Kirk
Mayor

AKøpd
cc: The Honorable Board of City Commissioners
E. H. Denton, City Manager
Lynn Muchmore, Budget Director, State of Kansas
Robert A. Lakin, Director of Planning

THE CITY OF WICHITA

RECEIVED
OCT 6 1982
METROPOLITAN PLANNING
ROUTE ☐
☐

OFFICE OF THE MAYOR
CITY HALL — FIRST FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4331

October 5, 1982

The Honorable John Carlin
Governor
State of Kansas
State Capitol, Second Floor
Topeka, KS 66612

Dear Governor Carlin:

The Board of City Commissioners of the City of Wichita, Kansas, recently considered President Reagan's Executive Order rescinding OMB Circular A-95 and the options that might be available to the State.

We believe that there is a need for some type of review process below the State level. Applications for federal assistance or development projects undertaken directly by the Federal government should be reviewed.

The City Commission recommends that the Metropolitan Area Planning Commission (MAPC) be designated as the local review agency in Sedgwick County. The MAPC should review projects which affect land use, the provision of utilities, housing and transportation.

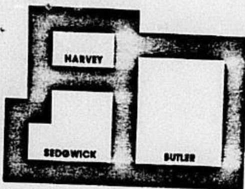
There may be other groups in a better position to review education and social programs. We suggest that some formal review procedure be established for education and social programs at the State and local level.

The Commission has authorized the Planning Director and/or a member of the MAPC to work with the State in developing rules, regulations and procedures for review of applications.

Sincerely,

Albert Kirk
Mayor

AK/pd
cc: The Honorable Board of City Commissioners
E. H. Denton; City Manager
Lynn Muchmore, Budget Director, State of Kansas
Robert A. Lakin, Director of Planning



CENTRAL PLAINS TRI COUNTY PLANNING COMMITTEE

CITY HALL - TENTH FLOOR, 455 NORTH MAIN STREET, WICHITA, KANSAS 67202 (316) 268-4391

September 28, 1982

The Honorable John Carlin, Governor
State of Kansas
Second Floor, State Capitol
Topeka, Ks. 66612

Dear Governor Carlin:

At the last Central Plains, Tri-County Planning Committee meeting the Committee considered President Reagan's Executive Order that rescinds the federal A-95 notification and review program. Under this program, local governments were notified and could submit comments concerning federal grants, loans, and projects. The order indicates that if states create their own project notification and review program, federal agencies will abide by those programs.

Tri-County Committee members feel that the A-95 program is useful because it is the only formal method by which local governments learn about federally assisted projects. The program enables local governments to coordinate projects, work out conflicts, and avoid duplication. Without an A-95 program, proposals for federal assistance would be reviewed only by federal officials in Kansas City, MO and Washington, D.C. The A-95 program helps Kansas get more benefits from the federal dollars spent in the State.

Therefore, the Central Plains, Tri-County Planning Committee respectfully recommends that you create a Kansas project notification and review program. As a component of this program, areawide comprehensive planning agencies should be designated to conduct project notification and review programs within their jurisdictions.

In the Tri-County area each county has decided whether to conduct an A-95 program; Butler and Sedgwick Counties do and Harvey County does not. In order to retain this flexibility, the Committee recommends that the State designate separate project notification and review programs in Butler and Harvey Counties when requested by the respective Board of County Commissioners and in Sedgwick County when requested by the Sedgwick County and City of Wichita Commissioners.

Should the State decide to establish a project notification and review program, the Committee requests the opportunity to review and comment on the proposed program before it is adopted.

The Central Plains, Tri-County Planning Committee greatly appreciates your consideration of this matter. The Committee offers whatever assistance that it can provide in developing a Kansas project notification and review program.

Robert A. Lakin, Secretary

RAL:CEL:rh

cc: Lynn Muchmore, Budget Director, State of Kansas

CITY HALL - TENTH FLOOR, 455 NORTH MAIN STREET, WICHITA, KANSAS 67202 (316) 268-4391

Original
One /Copy to Harvey County
Commissioners 10/4/82

September 28, 1982

TO: Butler County Board of County Commissioners
Harvey County Board of County Commissioners

FROM: Robert A. Lakin, Secretary, Central Plains, Tri-County Planning Committee

SUBJECT: A-95 REVIEW PROGRAM RESCISSION

On July 14, 1982, President Reagan issued an Executive Order that rescinds the federal A-95 notification and review program (attached). Under this program, local governments were notified and could submit comments concerning federal grants, loans, and projects. Federal agencies will abide by a program created by the State to replace A-95.

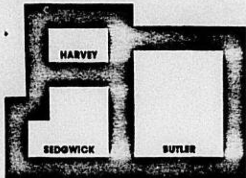
The Central Plains, Tri-County Committee supports the creation of a project notification and review program in Kansas (see attached letter). The Committee also urges each Board of County Commissioners to support creation of such a program and to express this support to Governor Carlin.

If you require more information about A-95 or the Tri-County position, please contact Carl Leivo at 268-4391.

Robert A Lakin

Robert A. Lakin, Secretary
Central Plains Tri-County Planning Committee

RAL:CEL:rh
Attachments



CENTRAL PLAINS TRI COUNTY PLANNING COMMITTEE

CITY HALL - TENTH FLOOR, 455 NORTH MAIN STREET, WICHITA, KANSAS 67202 (316) 268-4391

One original copy to Butler
County Commissioners 10/4/82

September 28, 1982

TO: Butler County Board of County Commissioners
Harvey County Board of County Commissioners

FROM: Robert A. Lakin, Secretary, Central Plains, Tri-County Planning Committee

SUBJECT: A-95 REVIEW PROGRAM RESCISSION

On July 14, 1982, President Reagan issued an Executive Order that rescinds the federal A-95 notification and review program (attached). Under this program, local governments were notified and could submit comments concerning federal grants, loans, and projects. Federal agencies will abide by a program created by the State to replace A-95.

The Central Plains, Tri-County Committee supports the creation of a project notification and review program in Kansas (see attached letter). The Committee also urges each Board of County Commissioners to support creation of such a program and to express this support to Governor Carlin.

If you require more information about A-95 or the Tri-County position, please contact Carl Leivo at 268-4391.

Robert A. Lakin, Secretary

RAL:CEL:rh
Attachments

D R A F T

September 28, 1982

The Honorable John Carlin, Governor
State of Kansas
State Capitol, Second Floor
Topeka, KS 66612

Dear Governor Carlin:

As President Regan has recinded the requirements of OMB Circular A-95, effective April 30, 1983, the Board of Sedgwick County Commissioners have considered alternatives which might be available to Kansas.

We believe, with the President, that the reduction of federal requirements and the return to the State and local governments responsibilities and decision-making is a step in the right direction.

We do believe, in particular, that there is a need for some method by which local governments have an opportunity to learn about and review proposed federal grants, loans, and projects. This will help local elected officials to solve problems, resolve conflicts, avoid duplication, and minimize costs.

Therefore, we ask that you consider, in conjunction with elected local officials, the establishment of a notification and review procedure to be conducted at the local or areawide level. The procedure should be similar to the A-95 procedures we now have. We urge that the system developed, minimize paperwork and provide for direct communication between the local reviewing agency and appropriate federal agencies.

We and our staff will be glad to assist in the development of any review policy.

Sincerely,

Jack Spratt, Chairman
Board of County Commissioners

JS:RAL:vn
cc: Don Gragg, Sedgwick County Commissioner
Tom Scott, Sedgwick County Commissioner
Lynn Muchmore, Budget Director, State of Kansas
Tim Witsman, Sedgwick County Director of Administration
Robert A. Lakin, Director of Planning/Secretary to the Wichita-Sedgwick County Metropolitan Area Planning Commission

KANSAS ASSOCIATION OF REGIONAL PLANNING COMMISSIONS
112 WEST SEVENTH STREET
TOPEKA, KANSAS 66603
Phone 913/354-9565

CHAIRMAN
Ed Lewis
Greater Southwest Regional Planning Commission

VICE CHAIRMAN
Jim Gardner
Central Plains Tri-County Planning Committee

SECRETARY
Charles Sellens
Northwest Kansas Planning and Development Commission

TREASURER
John Lehman
Indian Hills Association of Local Governments

TO: Executive Directors, Kansas Regional Planning Commissions

FROM: Chris McKenzie, KARPC Executive Secretary

DATE: September 17, 1982

SUBJECT: KARPC A-95 Resolution

Enclosed for your information is a copy of the resolution that I drafted pursuant to a motion by the KARPC Governing Body at its August 27, 1982 meeting. I asked both Jan Gerdom and Ethan Kaplan to review a draft of the resolution for me. In my estimation, it accurately represents the position that the Governing Body took at their last meeting.

I will be sending a copy of this resolution to each member of the Governing Body at the time I send out the minutes from the last meeting and the agenda for the October 6, 1982 meeting. Please let me know if you have any questions.

CM:gs

Encl.

MEMBER ORGANIZATIONS
BIG LAKES
CENTRAL PLAINS
CHIKASKIA
FLINT HILLS
GOLDEN BELT
GREATER SOUTHWEST
INDIAN HILLS
MID-AMERICA
MID-STATE
MO-KAN
NORTH CENTRAL
NORTHWEST KANSAS
SOUTHEAST KANSAS

RECEIVED
SEP 20 1982
METROPOLITAN PLANNING
ROUTE ☐ ____________
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Kansas Association of Regional Planning Commissions

RESOLUTION No 82-2

Task Force on Development of Federal Grant Application Review Process

WHEREAS, on July 14, 1982 President Reagan issued Executive Order 12372 which established a new federal policy of consultation and cooperation with state and local governments in the administration of federal financial assistance and development programs;

WHEREAS, the Executive Order substantially altered the current system of area-wide and state level review of federal grant and development programs under OMB Circular A-95;

WHEREAS, under the A-95 project notification and review system Kansas Regional Planning Commissions conduct reviews of federal grant applications at public hearings, and such reviews significantly contribute to the coordination of planning and development activities within each region;

WHEREAS, Executive Order 12732 provides that states, in consultation with local general purpose governments, are encouraged to develop their own procedures for reviewing and making recommendations on financial assistance and direct developments proposed by the federal government;

WHEREAS, the Kansas Association of Regional Planning Commissions supports the recommendation of the Southeast Kansas Regional Planning Commission that the Governor and the Division of the Budget establish an A-95 review process that continues the use of existing regional clearinghouses;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Kansas Association of Regional Planning Commissions that the Honorable John Carlin, Governor of the State of Kansas, is urged to appoint a special task force to recommend procedures and policies for the implementation

of a federal grant notification and review system involving the regional planning commissions of Kansas.

RESOLVED FURTHER, that the Governor is urged to appoint representatives of the Division of Budget, the Kansas Association of Regional Planning Commissions, the League of Kansas Municipalities, and the Kansas Association of Counties to the task force.

RESOLVED FURTHER, that the federal grant task force be directed to make recommendations to the Governor no later than December 31, 1982 since Executive Order 12372 requires implementation of new consultation procedures no later than April 30, 1983.

RESOLVED FURTHER, that a copy of this resolution be sent to the Honorable John Carlin, Governor of the State of Kansas, and Lynn Muchmore, Director, Division of Budget, Kansas Department of Administration.

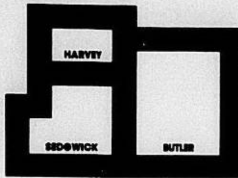
I hereby certify that the above resolution was adopted by the Governing Body of the Kansas Association of Regional Planning Commissions on August 27, 1982.

Christopher McKenzie

Christopher McKenzie
Executive Secretary

KANSAS ASSOCIATION OF REGIONAL PLANNING COMMISSIONS
112 WEST SEVENTH STREET
TOPEKA, KANSAS 66603

Robert A. Lakin, Sec.
Wichita-Sedgwick Co.
Metro-Area Plng. Dept.
455 N. Main--10th Floor
Wichita KS 67202



CENTRAL PLAINS TRI COUNTY PLANNING COMMITTEE

CITY HALL - TENTH FLOOR, 455 NORTH MAIN STREET, WICHITA, KANSAS 67202 (316) 268-4391

RE: AGENDA ITEM NO. 4

September 1, 1982

TO: Central Plains Tri-County Planning Committee

FROM: Robert A. Lakin, Secretary

SUBJECT: A-95 Review

On July 14, 1982, President Reagan issued an Executive Order that rescinds the federal A-95 notification and review program (attached). Under this program, local governments were notified and could submit comments concerning federal grants, loans, and projects. The Order allows states to establish their own notification and review procedures and local agencies may be designated by the state to conduct local notification and review programs.

States have until April 30, 1983 to develop their own program. Meanwhile, current federal A-95 procedures will remain in effect.

Kansas could follow one of three courses:

1) It could take no action and no A-95 reviews would be conducted in the State after April 30, 1983.

2) The State could assume total responsibility for a notification and review program.

3) The State could delegate program responsibilities to local agencies.

Federal agencies are required to follow any new State notification and review program.

KARPC Executive Directors generally support continuing state and local A-95 programs. There is considerable sentiment to streamline the program. The executive directors felt that the notification part of the A-95 program was more valuable than conducting formal reviews. On August 27, 1982, KARPC asked staff to prepare a letter to Governor Carlin requesting that Kansas establish a notification and review program.

In the Tri-County area, each county has decided whether to conduct an A-95 program. On August 5, the MAPC requested the Wichita

and Sedgwick County Commissions to state that there is a need for a notification and review program, recommend that the MAPC be designated to conduct the local program in Sedgwick County and recommend that some state and local procedures be established for review of social type programs and projects (attached).

I recommend that the Central Plains Tri-County Planning Committee request that:

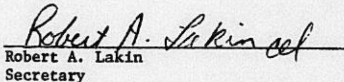
1) Governor Carlin create a State notification and review program.

2) As a component of this program, areawide comprehensive planning agencies be designated to conduct notification and review programs within their jurisdictions.

3) The Central Plains, Tri-County Planning Committee recommends that the State designate separate notification and review programs in Butler and Harvey Counties as requested by the respective Boards of County Commissioners and in Sedgwick County as requested by the Sedgwick County and City of Wichita Commissioners.

4) The Central Plains, Tri-County Planning Committee have an opportunity to review and comment on a proposed State notification and review program before it is adopted.

If you have any questions, please call Carl Leivo at 268-4391.



Robert A. Lakin
Secretary

RAL:CEL:rh
Attachments

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 5, 1982

TO Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

DR 82-21

SUBJECT A-95 Review

On July 14, 1982, President Reagan issued an Executive Order that rescinds the requirement for A-95 Reviews on applications for federal funding of various projects and programs. The Order institutes a new policy that allows state governments to establish their own process for reviewing requests for federal financial assistance and direct federal development activities. Local agencies or organizations may be designated by the State as local reviewers for all or some applications. States, who must consult with local governments, have until April 30, 1983 to develop their own rules, regulations and procedures for review of applications for federal assistance and direct federal development activities. Current federal procedures listed in OMB Circular A-95 shall continue in effect until the new rules, regulations and procedures are adopted. Federal agencies would be required to follow the new State process to determine local interest and try to accommodate State and local concerns in proposed programs and projects.

It is our understanding that the Order requires that one of the following will occur:

1. The State totally assumes responsibility for review of federal assistance requests and direct federal development.

2. Designation by the State of a substate or local agency as an area planning organization responsible for review of federal assistance requests and direct federal development.

3. No review at all.

If option 1 or 2 is selected, new rules, regulations and procedures are to be developed by the State and submitted to the Federal Office of Management and Budget (OMB) for approval. OMB will maintain a list of State and local agencies designated by the State to review and coordinate proposed federal assistance and direct federal development. The revised rules, regulations and procedures will become effective on April 30, 1983.

As a result of the Executive Order, State and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Through the City and County Commission request the State to designate MAPC as the area planning organization to perform the review for those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form.

2. Through the City and County Commission request the State to assume total review responsibility.

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

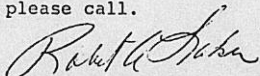
In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs, such as aging, substance abuse, CETA, etc., could be handled by a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

Even though the current A-95 review process in Sedgwick

County is somewhat of a routine matter, I feel that there is a definite need for some agency or organization to have the authority to review and coordinate applications for various programs and projects. For those programs and projects that would have a direct affect on local land uses, such as sewers, streets, rural water districts, housing, etc., I feel that the MAPC is the appropriate body to review requests for federal assistance. Programs and projects of a social nature (CETA, aging, drug abuse, etc.), could be passed or handled by a local advisory board that is already established and acting as a coordinating organization, such as the Alcohol and Drug Abuse Advisory Board.

I would recommend that the MAPC request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize me and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

If you have any questions, please call.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachment
cc: Board of City Commissioners
E. H. Denton, City Manager
Wayne Isaac, Federal Aid Coordinator
Sedgwick County Commissioners
Forest Tim Witsman, County Department of Administration

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

BULLETIN NO. 82-15 July 19, 1982

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Consultation with State and Local Governments on Federally Assisted Programs and Projects

1. Purpose. This Bulletin provides interim policy guidance governing consultation with state and local governments prior to adoption of new regulations implementing Executive Order No. 12372.

2. Authority. Executive Order No. 12372 and the Intergovernmental Cooperation Act.

3. Background. The President has issued an Executive Order entitled "Intergovernmental Review of Federal Programs." The Order institutes a new policy providing elected officials of state and local governments the opportunity to establish their own process for review of Federal financial assistance or direct Federal development activities undertaken by the agencies. It also provides that all Federal agencies shall continue to comply with the requirements of A-95 and their own rules and regulations until new regulations are adopted.

4. Policy.

(a) Agencies are directed by Executive Order No. 12372 to retain their existing A-95 implementing procedures and regulations until new implementation rules and regulations are issued not later than April 30, 1983.

(b) Until new regulations are issued, Federal agencies shall continue to require applicants for Federal assistance to seek reviews through existing state and local review mechanisms established pursuant to Circular A-95, unless a state sets up alternative interim intergovernmental review processes. OMB will inform the agencies of instances where states have made changes in the present A-95 clearinghouse system if such changes occur before the new regulations are issued.

(c) Rules, regulations, procedures, and program guidances for state and local review of direct Federal development projects shall likewise remain in effect. This shall include any memorandums of agreement between agencies, states, and areawide organizations established under Part II of OMB Circular A-95.

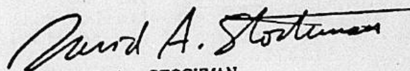
(over)

(d) Between now and April 30, 1983, the agencies will work with OMB in developing rules and regulations implementing Executive Order No. 12372.

5. Timing. Agencies shall submit proposed rules and regulations for OMB review during the next several months.

6. Inquiries. For further information, contact James F. Kelly, Deputy Associate Director for Intergovernmental Affairs (202-395-3774).

7. Sunset Date. This Bulletin expires on April 30, 1983.



DAVID A. STOCKMAN
DIRECTOR

BILLING CODE
3195-01-M

82 19474

EXECUTIVE ORDER

12372

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide 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 or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek 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. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 <u>Fed</u>. <u>Reg</u>. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the

rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,

July 14, 1982.

RECEIVED IN THE OFFICE OF THE FEDERAL REGISTER

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IN THE OFFICE OF THE FEDERAL REGISTER
JUL 14 3 18 PM '82

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release July 14, 1982

FACT SHEET ON EXECUTIVE ORDER ON

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

SUMMARY: President Reagan today issued an Executive Order which establishes a new federal policy of consultation and cooperation with state and local governments in the administration of federal financial assistance and development programs. The Executive Order advances the Administration's New Federalism and regulatory relief initiatives in several important ways.

Under the new Order, federal agencies are required to make every effort to accommodate the recommendations of state and local governments concerning federal programs affecting their jurisdictions. Federal agencies are required to defer to the states' own procedures for developing such recommendations; to inform state and local elected officials of proposed federal actions as early as possible; and, where state and local recommendations cannot be accommodated, to explain why in a timely fashion. The Order also contains provisions to strengthen the authority of state and local elected officials and encourage simplification of state planning requirements imposed by federal laws.

BACKGROUND: The Executive Order substantially revises the current system of intergovernmental consultation over federal grant and development programs. The old system, under OMB Circular A-95, required state and local governments to follow prescribed review procedures and to review specified federal programs. The system also required review of federal programs by state and local agencies without regard to the priorities of their elected leadership.

-MORE-

The A-95 process became highly bureaucratic and burdensome. Under Circular A-95, annual reviews of over 100,000 grant applications created a staggering paperwork burden costing over $50 million each year--with little positive return to state and local governments and their citizens. The new Executive Order directs the revocation of Circular A-95, and shifts the initiative for setting review procedures and priorities to the states and localities. This shift will:

- Provide states the opportunity to establish their own review and coordination procedures, which must be recognized by federal agencies;
- Encourage more timely and effective participation by state and local elected officials in federal decisions concerning programs and projects within their jurisdictions;
- Reduce federal regulatory requirements; and
- Strengthen State and local governments by diminishing the influence of special purpose agencies created primarily to administer federally funded programs.

SCOPE: The Executive Order covers the federal activities listed below. A state's review process may cover all or only some of these activities, based on the priorities of state and local officials.

- All categorical grant-in-aid programs identified in the Catalog of Federal Domestic Assistance;
- Research and demonstration programs affecting states or municipalities;
- Assistance in the form of loans or loan guarantees;
- All federal real property acquisition and construction activities, including Corps of Engineers projects and military bases;
- Major changes in the use of land, water, or real property owned or leased by the federal government;
- The issuance or modification of licenses and permits; and
- Planning requirements mandated by the federal government.

-MORE-

The Order is not applicable to the following federal activities:

- Proposed federal legislation, regulations, and budget formulation;
- Direct payments to individuals;
- Financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects (i.e., block grants, revenue sharing, etc.); and
- Classified programs or activities where formal consultation would endanger national security.

Federally recognized Indian tribes are exempted from the requirements of the Executive Order.

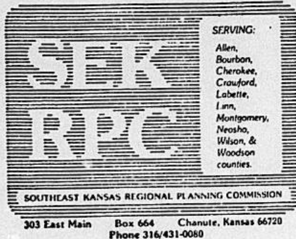
IMPLEMENTATION: State and local governments are encouraged to fashion their own procedures (or to refine existing ones) for reviewing and making recommendations on financial assistance and direct developments proposed by the federal government. States must consult with local governments in establishing the procedures recognized by the Executive Order, and may delegate, in specific instances, review and recommendation responsibilities to local elected officials. The new Order is consistent with the Administration's view that local elected officials should work together in solving their common problems.

Federal agencies will examine present consultation procedures and eliminate repetitive and prescriptive requirements wherever possible. Where existing statutes provide for consultation with state and local governments consistent with the policies of the Executive Order, no new regulations will be required. Federal agencies will also permit states to simplify and consolidate federally required state plans, and will discourage the creation or reauthorization of special-purpose planning organizations that are federally funded, have federally prescribed memberships, or are not adequately accountable to state or local elected officials.

The Office of Management and Budget will maintain a listing of the review procedures adopted by the states and oversee federal implementation of the Executive Order.

Federal agencies will begin to use the new consultation procedures not later than April 30, 1983. Existing regulations under OMB Circular A-95 will remain in force until then. By this date, states should have notified OMB of their designated consultation procedures or have decided not to participate.

# # # # #



303 East Main Box 664 Chanute, Kansas 66720
Phone 316/431-0080

RECEIVED
AUG 2 1982
METROPOLITAN PLANNING
ROUTE

To: Kansas Regional Planning Commissions

From: Ethan Z. Kaplan, Executive Director *Ethan*

Date: July 30, 1982

RE: ENCLOSED RESOLUTION ON A-95

The enclosed resolution was sent to Governor Carlin and Lynn Muchmore after being adopted by our Board. It represents the view of this Commission, but we do hope you share our concern. In addition to suggesting that your Commission support this activity, we do feel the KARPC Board should also concern itself with this issue.

It is our understanding that we do need to act quickly to let Lynn Muchmore and Governor Carlin know of our interest. This need for a quick response was the reason for our action. If you do not have a copy of President Reagan's Executive Order, let me know.

303 East Main Box 664 Chanute, Kansas 66720
Phone 316-431-0080

July 30, 1982

The Honorable John Carlin, Governor
State of Kansas
Second Floor, Statehouse
Topeka, KS 66612

Dear Governor Carlin:

On behalf of the Board of the Southeast Kansas Regional Planning Commission, I have enclosed a formal resolution adopted by the governing body at their July 29, 1982 meeting.

This resolution expresses our concern regarding President Reagan's Executive Order No. 12372 of July 14, 1982, revoking OMB Circular A-95. It is our understanding that this order requires that the state either totally assume A-95 review, continue the Areawide review at the state's option, or not review at all. This decision is to be made by April 30, 1983.

In this region, local officials have been intimately involved in the A-95 review of federal applications through their participation in the monthly open hearings on all applications for federal funding and in their response to specific requests for comments. Our regional commission is one of the few in Kansas to hold monthly meetings of the full General Assembly; not just the Executive Committee. The A-95 Review process has been an integral part of these meetings.

This Commission has supported the A-95 activity primarily through local dues contributions, not federal funding. We will continue to provide this service if given the opportunity. It is our understanding that the state can inform OMB of its intention to continue this local activity and all federal agencies will then inform applicants to continue to submit their material to the local Areawide Agency. This will insure continuation of what, in our area, has been a most efficient major communication and coordination tool for local governments.

In this region we have enjoyed excellent relations with the State A-95 Clearinghouse, particularly the Coordinator and also the Director of the Division of the Budget. We feel the input of our local officials can be of benefit to them in their future A-95 review activity.

Thank you for your review of this resolution. Please feel free to have your office call on us if we can provide any further information.

Sincerely,

Ethan Z. Kaplan

Ethan Z. Kaplan
Executive Director

EZK/jap

Enclosure

cc: Lynn Muchmore
George Vega

A RESOLUTION
OF THE
SOUTHEAST KANSAS REGIONAL PLANNING COMMISSION

Whereas, the Planning Commission, serving ten member counties and seventy-three cities, has served since its inception as the Areawide A-95 Clearinghouse, and

Whereas, said Commission has reviewed all applications at full open hearings before a body of local elected officials, representing ten counties and, in addition, has submitted these applications for comment to appropriate governing bodies prior to the hearings, and

Whereas, this process has allowed full input from local officials and, in many instances, has resulted in improved and co-ordinated utilization of federal and state funds, and

Whereas, the continuation of this local review pursuent to President Reagan's Executive Order #12372, is a decision to be made by the state;

Now Therefore, the Southeast Kansas Regional Planning Commission petitions the Governor and the Bureau of Budget to establish an A-95 process which continues the use of the existing Areawides, and to so notify relevant federal agencies and the U.S. Office of Management and Budget of this decision.

For the Southeast Kansas
Regional Planning Commission

Jesse Jackson
Jesse Jackson, Chairman
July 29, 1982

Attest:

Ethan Z Kaplan
Ethan Z. Kaplan
Executive Director

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 30, 1982

TO The Board of City Commissioners
(through E. H. Denton, City Manager)

FROM Robert A. Lakin, Director of Planning

SUBJECT DR-82-21 A-95 Review Procedure Revision

SUMMARY

An Executive Order was issued on July 24, 1982, by President Reagan that recinded the requirements of OMB Circular A-95 effective April 30, 1983. States have until April 30, 1983 to develop new rules, regulations and procedures for the review of federal assistance programs and projects and direct federal development activities. The states may choose to not review applications for federal assistance. Local governing bodies have been encouraged to make recommendations to the state governments regarding new procedures. The MAPC has requested that the City and County Commissions recommend that some form of review be continued and that the MAPC be designated as the local review body for certain applications.

BACKGROUND

On July 24, 1969, regulations requiring local review of applications for Federal assistance for various projects and programs were published as OMB Circular A-95. The Circular has been amended several times to include additional programs and projects, with the last major amendment in 1976. Currently, Circular A-95 covers most federal assistance programs and projects, as well as direct federal development. Programs involving direct financial assistance to individuals do not have to undergo an A-95 Review.

The MAPC was designated as the local clearinghouse in 1969 and has been reviewing applications since that time. Projects and programs reviewed have ranged from CETA to rural water districts to law enforcement to CDBG. This has included nearly all "social" and "physical" programs and projects receiving federal assistance.

On July 14, 1982, President Reagan issued an Executive Order recinding the requirement for A-95 Reviews on applications for federal assistance. State governments may establish their own process for reviewing applications for federal assistance. Local agencies or organizations may be designated by the state as local reviewers for all or some pro-

jects. Current federal procedures listed in OMB Circular A-95 shall continue in effect until new procedures are adopted and approved by OMB, or until April 30, 1983. Federal agencies would be required to follow the new process in order to determine local interest and to try to accommodate state and local concerns in proposed programs and projects.

DISCUSSION

It is our understanding that the Order requires that one of the following will occur:

1. The State could totally assume responsibility for review of federal assistance requests and direct federal development.

2. The State could designate a substate or local agency (such as an area planning organization) to be responsible for review of some or all federal assistance requests and direct federal development.

3. The State could provide that there be no review at all.

As a result of the Executive Order, state and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Request the State to designate MAPC as the area planning organization to perform the review for

those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form; or

2. Request the State to assume total review responsibility; or

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs that have broader jurisdictional bases such as aging, substance abuse, CETA, etc., could be handled by the State or a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a broad based substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

RECOMMENDATION

On August 12, 1982, the MAPC unanimously approved the following motion:

> That the Planning Commission request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize the Director of Planning

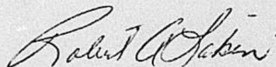
The Board of City Commissioners
(through E. H. Denton, City Manager)
Page Four
August 30, 1982

and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

RECOMMENDED ACTION

1. Concur in the recommendations of the MAPC and authorize the Mayor to sign a letter to the Governor stating that there is a need for some type of review process for applications for federal assistance or direct federal development and recommending that the MAPC be designated as the local review agency for projects and programs in Sedgwick County that would affect land use, the provision of utilities, housing and transportation, and some formal review procedure be established for social type programs and projects at the State and local level; and authorize the Planning Director and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

2. Take whatever action the Commission deems to be in the best interest of the City.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachments:
1. Memo to MAPC
2. Summary of Executive Order
3. Executive Order 12372
4. Minutes of MAPC Meeting

Haysville Planners To Tangle With MAPC Over Review Authority

HAYSVILLE— An executive order issued by President Ronald Reagan on July 14 has caused a small feud between Haysville's Planning Commission and the Metropolitan Area Planning Commission.

The executive order rescinds the requirements for A-95 review on applications for some federal funding and instructs the states to construct their own plan for review, with the input of local governments.

The A-95 review refers to a circular from the Federal Office of Management and Budget outlining the procedure for grants to be reviewed. The purpose for the review was to reduce duplication and mismanagement of funds, by opening up a dialogue between local governments through the review process.

Currently, the reviewing agency for Haysville's grant requests is the MAPC, and that, according to Haysville city officials, has created some problems.

Although Wichita Director of planning Robert A. Lakin says the review process has never been used as a power of veto, Haysville Planning Commission members cite examples where grant requests were held up or rejected all together because, for instance, they were not in compliance with MAPC's land use plan.

However, MAPC refuses to recognize Haysville's land use plan, commission members say, and they add that even after repeated requests they have been unable to obtain a copy of Wichita's plan.

"They can cut us off. That's been done before and it's been done to us," said planning secretary Pauline Ozbun.

MAPC is a joint board run by Wichita and Sedgwick County. Although each governmental unit appoints five of the 10 members on the board, all but two of the board members live in Wichita. Lakin said this has been a point of contention in dealing with the small cities, and new legislation provides that the next appointment to the board by county commissioners must come from one of Sedgwick County's smaller cities.

Lakin's proposal, as outlined in a memo to the MAPC dated Aug. 5, suggests city and county commissioners formally state there is a need to have some type of review process for federal grant applications, and the MAPC should be designated as the review agency for Sedgwick County. He further recommends he be authorized to work with the state in setting up the review process. In closing, he proposes socials programs and projects be covered by some separate review process.

Haysville planning chairman, George Rosendale, thinks that could spell disaster for Haysville.

"If MAPC has power to review, then they have the power to coerce agreement to any of their plans," Rosendale said.

Although there was some concern among local commission members about turning over review control directly to the state, the members found that preferable to review by MAPC.

"There's a tendency in Topeka to get wrapped up in generalities and not speak to the specific needs of the community," Rosendale said.

Commission member Rick Engdahl agreed, but said it would be easier to return control to the local level from the state later than it would be to return the control from MAPC.

"It's easy to pull away from the state, but you'll never get away from MAPC," Engdahl said. "They'll put a strangle hold on you and they'll never let go."

"I think we have a much better chance with the state," said Rosendale. "There's too many ill feelings up there (MAPC) where the state is more neutral."

Monday night, the city council authorized the planning commission to respond to the governor's request for recommendations on how the review should be handled.

Rosendale will draft a letter to the governor recommending the review be handled at the state level or not at all, and will return the letter to the next planning commission meeting for further discussion.

The Daily Reporter
Fri Aug 27, 1982

City Of
HAYSVILLE
CHARLES F. VOGT
CITY ADMINISTRATOR
MUNICIPAL BUILDING
200 W. GRAND
P. O. BOX 404
HAYSVILLE, KS 67060
OFF. 524-3243
RES. 524-3915

Bob / See Last Page
Charly

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METROPOLITAN PLANNING
ROUTE

Haysville Planning Commission
Minutes
August 26, 1982

Those Members present were: Frank Lewallen, Virgil Love, Bob Wethington, George Rosendale, and Rick Engdahl. Walter Branch arrived at 8:10 p.m.

Motion by Rick Engdahl
Second by Frank Lewallen
That we approve the minutes of August 12, 1982
Vote was 4 yes, 1 abstained (Bob Wethington - not present at that meeting)
(Walter Branch had not yet arrived)

Motion by Bob Wethington
Second by Frank Lewallen
That we correct May 27, 1982 minutes as noted on the agenda for August 26, 1982.
Vote was 4 yes, 1 abstained (Rick Engdahl was not present at that meeting)

(Note August 26th Agenda attached to these minutes)

Walter Branch arrived.

Chairman, George Rosendal explained process of Public Hearings and declared Public Hearing open on amendments to Land Use Plan.

Cheryl Phillipe, P.E.C., presented 15 proposed changes.

Proposed changes were:

1. Area "A" from 1982 Annexation Study, generall described as the unincorporated area southwest of 63rd Street and Broadway intersection, be left as is on the City's land use plan map.

2. Area "B" from 1982 Annexation Study, generally described as the unincorporated area northwest of the 71st and Broadway intersection, be amended to show commercial land use along Broadway to a depth equal to the existing City boundary (and commercial property), or approximately 660 feet.

3. Area "C" from 1982 Annexation Study, generally described as the unincorporated area southeast of the 71st Street and Broadway intersection, be amended to show a commercial area bounded by the east line of American R.V. lots extended to the south (approximately 660 feet), and the south line of Twin Pines Addition extended to the east (approximately 660 feet); with the remainder of the area to be shown as industrial; and the S.W. ¼ of this same quarter-section to remain as is shown on the City's land use plan map.

4. Area south of City boundary to 79th Street, between Broadway Avenue and Main Street (Seneca), be amended to show the proposed park area (green) being moved from the S.E. ¼ to approximately the same number of acres in the S.W. ¼ facing onto 79th Street; and further, that commercial land use be shown 300 feet in depth along the west side of Broadway Avenue.

City Of
HAYSVILLE

Bob
See Last Page
Charly

CHARLES F. VOGT
CITY ADMINISTRATOR

MUNICIPAL BUILDING
200 W. GRAND
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HAYSVILLE, KS 67060

OFF. 524-3243
RES. 524-3915

5. Area south of City boundary to 79th Street between Main Street (Seneca) and Meridian Avenue, be left as is (residential) on the City's land use plan map, except that the specific location of the dedicated park land be corrected to correspond to the recent action.

6. Area to the northwest of the intersection of 79th and Meridian Avenue, be left as (residential) on the City's land use plan map.

7. Area to the southwest of the intersection of 71st and Meridian Avenue, be left as is (residential and park areas) on the City's land use plan map.

8. Area to the northwest of the intersection of 71st and Meridian Avenue continuing up to 63rd Street, and extending west approximately one-half mile (the easterly portion of this area was Area "E" from 1982 Annexation Study), be left as is on the City's land use plan map.

9. Area from 63rd Street, one-half mile north between Meridian Avenue and Seneca Avenue, be left as is on the City's land use plan map.

10. Area "F" from 1982 Annexation Study, generally described as the unincorporated area southwest of the 63rd Street and Seneca intersection, be left as is on the City's land use plan map.

11. Area from 63rd Street, one-half mile north between Seneca Avenue and the railroad tracks, be shown as having increased commercial along the east side of Seneca Avenue to a depth of 300 feet and otherwise be left as is.

12. Area from 63rd Street, one-half mile north between the railroad tracks and the half section line, be left as is on the City's land use plan map (residential and open space).

13. Area from 63rd Street, one-half mile north between the half section line and Broadway Avenue, be left as is on the City's land use plan map.

14. Area from 63rd Street, one-half mile north between Broadway Avenue and the Turnpike, be left as is on the City's land use plan map.

15. Area to the southeast of the 63rd Street and Broadway intersection, south to the Valley Center Floodway, be amended to show approximately 600 feet in depth as commercial from the intersection, and the balance of the area to remain unchanged on the City's land use plan map.

Chairman suggested that because of the Chris-Clear zone change recently that that area would have to be considered for change also.

Chairman called for those in favor of the proposed amendments to speak.

Dean Sinn, 3408 Euclid, Wichita, stated he owned property in area "C" and that proposed amendments were acceptable to him.

Chairman called twice for those in favor to speak.

CHARLES F. VOGT
CITY ADMINISTRATOR

MUNICIPAL BUILDING
200 W. GRAND
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HAYSVILLE, KS 67060

OFF. 524-3243
RES. 524-3915

Bob
See Last Page
Charly

Loren Shufelberger, Councilman, said he would like to see the S.W. Corner of 63rd and Broadway go industrial because there was a buyer if it was industrial.

Chairman called three times for those in opposition to the proposed amendments to speak.

Mel Meyers, 6603 So. Meridian said he was not opposed, but wished to know what effect the amendments would have on farm property west of Meridian?

He was told that the proposed action would not have any effect on the property in question.

Ron Stein asked about land in area "B" next to Turnpike.

Chairman explained that according to our zoning ordiance anything from light industrial to duplex could be built in that area.

Anita Landreth. Councilperson, ask about the zoning on that property now. She was told it was now zoned residential in the county.

Possible zone change ordinance and its effect on zoning in those areas annexed was discussed.

Chairman called three times for those in opposition to speak. There were none.

Chairman declared Public Hearing closed.

Motion by Frank Lewallen
Second by Rick Engdahl
That we change the re-zoned portion of the Chris-Clear plat to industrial on the Land Use Map.
Vote was 5 yes, 1 no (Bob Wethington)

Motion by Bob Wethington
Second by Walter Branch
That we make the change for Chris-Clear item 16 and the text of amendments for the Land Use Plan.

16. Area located approximately 1,320 feet to the north of the 63rd Street and Seneca intersection on the west side of Seneca, and commonly referred to as the Chris Clear Addition, be amended to show as industrial land use on the City's Land use plan map. (Refer to Case No. SCZ-0504).

Vote was unanimous

Motion by Bob Wethington
Second by Frank Lewallen
That Land Use Plan amendments be approved, resolution be prepared and proposed changes be forwarded to all interested parties.
Vote was unanimous

City Of
HAYSVILLE

Bob
See Last Page
Charly

CHARLES F. VOGT
CITY ADMINISTRATOR

MUNICIPAL BUILDING
200 W. GRAND
P. O. BOX 404
HAYSVILLE, KS 67060

OFF. 524-3243
RES. 524-3915

A-95 review was discussed. In light of improved relations with MAPD it was felt that any recommendation should be so written so as not to be accusatory or break down the communications.

Alternatives to MAPC review were discussed. It was felt that no review at all might bog down the federal bureaucracy more than ever. Local review on an individual basis by Planning Commissions where they exist was considered. It was felt that this was what was happening now with both Wichita and Sedgwick County as MAPC reviews their grants and is an arm of their governing body. State review was considered as an alterna-tive for small cities, especially those in a metropolitan area.

It was suggested that if the time came that it was felt control needed to be rested from the state it would be easier to get control from them than it would to get it back from MAPC.

It was suggested that Grants be reviewed by only the most local planning authority. Wording suggested was:

That any local unit of Government having a Planning Commission should conduct a review and submit comments to be included in the application submitted to grantor. If this reccomendation is not acceptable, State review to be requested.

Motion by Virgil Love
Second by Rick Engdahl
That the Chairman, Vice Chairman and Secretary compose a letter to the Governor addressing this item subject to the comments of the Planning Commission and bring it to the Special Meeting on September 2, 1982 for Commission review.
Vote was unanimous

Not Composed as of this date
9/17/82
CFV

Motion by Rick Engdahl
Second by Walter Branch
That we adjourn
Vote was unanimous

MID-CONTINENT
FEDERAL REGIONAL COUNCIL

911 Walnut, Room 1600
Kansas City, Missouri 64106
816-374-2031 FTS: 758-2031

Memorandum

RECEIVED
AUG 21 1981
METROPOLITAN PLANNING
ROUTE ☐ ~~Cot~~
☐ ~~RAL~~

Staff cat

DATE : August 19, 1981

TO : All Clearinghouses

FROM : George Lineberry, Intergovernmental Relations, MCFRC George Lineberry

SUBJECT: Current Status of A-95 Circular

As you know, the Office of Management and Budget has spent considerable time over the last two years reviewing and rewriting Circular A-95. Each of you was involved in that process and your comments and participation were most helpful. The proposed revision of A-95 has now been completed and presented for final action within OMB.

There are a number of interrelated actions occurring now in Washington, D.C., involving both President Reagan's Administration and the Congress. The outcome of these activities will determine the future of not only the A-95 Circular, but the entire structure of federal-state-local information sharing and project coordination.

Four activities in particular stand out:

1. The Vice-President's Task Force for Regulatory Relief has recently developed a list of thirty federal regulations to be reviewed for major simplification or elimination. OMB Circular A-95 is on that list. Its selection is appropriate as the proposed changes would greatly relieve the prescriptiveness of the Circular. The recommendation of the Vice-President's Task Force will have a major impact on the future of A-95.

2. OMB Circular A-95, in its proposed revised form, has been sent forward from the Intergovernmental Affairs Division, OMB, for final review by Mr. Stockman. His recommendations will be sent to the White House staff to:

   a) Introduce the revised Circular for congressional approval.
   b) Take no action, thus continuing the current Circular in effect.
   c) Recommend recision of Circular A-95 with appropriate changes in other regulations to accomplish the goals of the Intergovernmental Cooperation Act of 1968.

3. Secretary Pierce, of Housing and Urban Development, has requested that OMB remove all HUD housing programs from the A-95 review process. The recently passed 1982 Budget Authorization bill exempts the Community Development Block Grants but does not extend such exemption to the various housing assistance programs.

4. Senator David Durenberger, Chairman of the Senate's Sub-committee on Intergovernmental Relations, has scheduled an oversight hearing on September 14, 1981, exclusively for the review of Circular A-95's effectiveness. Senator Durenburger was a sponsor of the Intergovernmental Cooperation Act of 1968, which provides much of the reason for the existence of Circular A-95. Several organizations are scheduled to testify including OMB and NARC.

Each of these events will play a major role in determining the fate of Circular A-95 and the style of future intergovernmental relations. I will keep you posted on these developments and others, as they become evident.

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KANSAS CITY, MISSOURI 64106

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Wichita-Sedgwick County
Metro. Area Planning Commission
455 North Main St., 10th Floor
Wichita, KS 67202

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 23 1982

MEMORANDUM TO A-95 CLEARINGHOUSE ORGANIZATIONS

SUBJECT: NEW EXECUTIVE ORDER 12372, "INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS"

The President signed Executive Order 12732 on July 14, 1982. This Order sets forth Administration policy on the manner in which Federal agencies consult with state and local governments. Further it directs the rescission of OMB Circular A-95, an action the Director of the Office of Management and Budget took on July 19, 1983.

I have attached copies of the Executive Order, Fact Sheet, and associated documents for your use.

There are two items of immediate importance to you. First, Federal agencies will continue to use existing review procedures (A-95) during the transition period. Nothing changes until new regulations implementing the Order are promulgated on or before April 30, 1983. Therefore, applicants are to continue to follow your clearinghouse procedures until then. Second, we are asking the elected officials in your state to start immediately to consider the structure of the consultation process they wish to adopt in response to the new policy. It is important for these officials to carefully consider which programs they wish to be consulted on and the procedures they wish to adopt for carrying out consultations within the state.

I hope you find this material useful.

James F. Kelly
Deputy Associate Director
for Intergovernmental Affairs

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 19, 1982

CIRCULAR NO. A-95
Rescission
Transmittal Memorandum No. 2

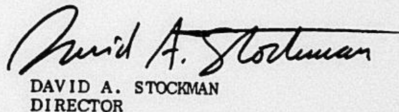
TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects

This memorandum rescinds OMB Circular No. A-95.

The President has issued Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." That Order directs the rescission of A-95 and provides for the institution of a new process for the intergovernmental review of federal programs.

Interim policy guidance to be followed until regulations implementing the Order become effective is being provided by an OMB Bulletin issued today. This policy guidance governs the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development in compliance with the Intergovernmental Cooperation Act.



DAVID A. STOCKMAN
DIRECTOR

STATE OF KANSAS

RECEIVED
APR 4 1983
METROPOLITAN PLANNING
ROUTE

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin Governor

March 31, 1983

Don Gragg, Chairperson
Central Plains Tri-County
Planning Commission
Sedgwick County Courthouse
Wichita, Kansas 67203

Dear Mr. Gragg:

I would like to invite you and the executive director of the Central Plains Tri-County Planning Commission to help formulate the State of Kansas response to President Reagan's Executive Order 12372. This order abolishes the present intergovernmental cooperation process known as the A-95 system.

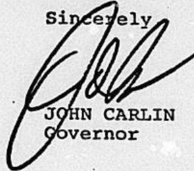
The meeting will be on Monday, April 11, 1983 at 1:30 p.m. in Room 220-South of the State Capitol Building. Representatives from other regional planning commissions, the League of Kansas Municipalities, Kansas Association of Counties, and selected state agencies have been invited to participate.

The state has the option of withdrawing from the program, modifying or continuing the present system. I hope this meeting will enable all interested individuals to express their viewpoints on this important subject so a consensus can be achieved on behalf of the state.

If you are unable to attend I would be interested in receiving your written comments. Please forward them and any questions you may have to Alan Conroy, Kansas Division of the Budget, First Floor, State Capitol Building, Topeka, Kansas 66612 or phone (913) 296-2436.

I thank you for your participation and interest and I am confident by working together that we can frame an appropriate response to the federal government on this issue.

Sincerely,



JOHN CARLIN
Governor

JC:sr

cc: Robert A. Lakin, 455 North Main, 10th Floor, Wichita, KS

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 31, 1982

TO The Board of County Commissioners

FROM Robert A. Lakin, Director of Planning

SUBJECT DR-82-21 A-95 Review Procedure Revision

SUMMARY

An Executive Order was issued on July 24, 1982, by President Reagan that recinded the requirements of OMB Circular A-95 effective April 30, 1983. States have until April 30, 1983 to develop new rules, regulations and procedures for the review of federal assistance programs and projects and direct federal development activities. The states may choose to not review applications for federal assistance. Local governing bodies have been encouraged to make recommendations to the state governments regarding new procedures. The MAPC has requested that the City and County Commissions recommend that some form of review be continued and that the MAPC be designated as the local review body for certain applications.

BACKGROUND

On July 24, 1969, regulations requiring local review of applications for Federal assistance for various projects and programs were published as OMB Circular A-95. The Circular has been amended several times to include additional programs and projects, with the last major amendment in 1976. Currently, Circular A-95 covers most federal assistance programs and projects, as well as direct federal development. Programs involving direct financial assistance to individuals do not have to undergo an A-95 Review.

The MAPC was designated as the local clearinghouse in 1969 and has been reviewing applications since that time. Projects and programs reviewed have ranged from CETA to rural water districts to law enforcement to CDBG. This has included nearly all "social" and "physical" programs and projects receiving federal assistance.

On July 14, 1982, President Reagan issued an Executive Order recinding the requirement for A-95 Reviews on applications for federal assistance. State governments may establish their own process for reviewing applications for federal assistance. Local agencies or organizations may be designated by the state as local reviewers for all or some pro-

jects. Current federal procedures listed in OMB Circular A-95 shall continue in effect until new procedures are adopted and approved by OMB, or until April 30, 1983. Federal agencies would be required to follow the new process in order to determine local interest and to try to accommodate state and local concerns in proposed programs and projects.

DISCUSSION

It is our understanding that the Order requires that one of the following will occur:

1. The State could totally assume responsibility for review of federal assistance requests and direct federal development.

2. The State could designate a substate or local agency (such as an area planning organization) to be responsible for review of some or all federal assistance requests and direct federal development.

3. The State could provide that there be no review at all.

As a result of the Executive Order, state and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Request the State to designate MAPC as the area planning organization to perform the review for

those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form; or

2. Request the State to assume total review responsibility; or

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs that have broader jurisdictional bases such as aging, substance abuse, CETA, etc., could be handled by the State or a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a broad based substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

RECOMMENDED

On August 12, 1982, the MAPC unanimously approved the following motion:

> That the Planning Commission request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize the Director of Planning

and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

RECOMMENDED ACTION

1. Concur in the recommendations of the MAPC and authorize the Chairman to sign a letter to sign a letter to the Governor stating that there is a need for some type of review process for applications for federal assistance or direct federal development and recommending that the MAPC be designated as the local review agency for projects and programs in Sedgwick County that would affect land use, the provision of utilities, housing and transportation, and some formal review procedure be established for social type programs and projects at the State and local level; and authorize the Planning Director and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

2. Take whatever action the Commission deems to be in the best interest of the County.

Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachments:
1. Memo to MAPC
2. Summary of Executive Order
3. Executive Order 12372
4. Minutes of MAPC Meeting

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 30, 1982

TO The Board of City Commissioners
(through E. H. Denton, City Manager)

FROM Robert A. Lakin, Director of Planning

SUBJECT DR-82-21 A-95 Review Procedure Revision

SUMMARY

An Executive Order was issued on July 24, 1982, by President Reagan that recinded the requirements of OMB Circular A-95 effective April 30, 1983. States have until April 30, 1983 to develop new rules, regulations and procedures for the review of federal assistance programs and projects and direct federal development activities. The states may choose to not review applications for federal assistance. Local governing bodies have been encouraged to make recommendations to the state governments regarding new procedures. The MAPC has requested that the City and County Commissions recommend that some form of review be continued and that the MAPC be designated as the local review body for certain applications.

BACKGROUND

On July 24, 1969, regulations requiring local review of applications for Federal assistance for various projects and programs were published as OMB Circular A-95. The Circular has been amended several times to include additional programs and projects, with the last major amendment in 1976. Currently, Circular A-95 covers most federal assistance programs and projects, as well as direct federal development. Programs involving direct financial assistance to individuals do not have to undergo an A-95 Review.

The MAPC was designated as the local clearinghouse in 1969 and has been reviewing applications since that time. Projects and programs reviewed have ranged from CETA to rural water districts to law enforcement to CDBG. This has included nearly all "social" and "physical" programs and projects receiving federal assistance.

On July 14, 1982, President Reagan issued an Executive Order recinding the requirement for A-95 Reviews on applications for federal assistance. State governments may establish their own process for reviewing applications for federal assistance. Local agencies or organizations may be designated by the state as local reviewers for all or some pro-

jects. Current federal procedures listed in OMB Circular A-95 shall continue in effect until new procedures are adopted and approved by OMB, or until April 30, 1983. Federal agencies would be required to follow the new process in order to determine local interest and to try to accommodate state and local concerns in proposed programs and projects.

DISCUSSION

It is our understanding that the Order requires that one of the following will occur:

1. The State could totally assume responsibility for review of federal assistance requests and direct federal development.

2. The State could designate a substate or local agency (such as an area planning organization) to be responsible for review of some or all federal assistance requests and direct federal development.

3. The State could provide that there be no review at all.

As a result of the Executive Order, state and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Request the State to designate MAPC as the area planning organization to perform the review for

those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form; or

2. Request the State to assume total review responsibility; or

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs that have broader jurisdictional bases such as aging, substance abuse, CETA, etc., could be handled by the State or a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a broad based substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

RECOMMENDATION

On August 12, 1982, the MAPC unanimously approved the following motion:

> That the Planning Commission request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize the Director of Planning

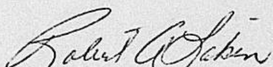
The Board of City Commissioners
(through E. H. Denton, City Manager)
Page Four
August 30, 1982

and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

RECOMMENDED ACTION

1. Concur in the recommendations of the MAPC and authorize the Mayor to sign a letter to the Governor stating that there is a need for some type of review process for applications for federal assistance or direct federal development and recommending that the MAPC be designated as the local review agency for projects and programs in Sedgwick County that would affect land use, the provision of utilities, housing and transportation, and some formal review procedure be established for social type programs and projects at the State and local level; and authorize the Planning Director and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

2. Take whatever action the Commission deems to be in the best interest of the City.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachments:
1. Memo to MAPC
2. Summary of Executive Order
3. Executive Order 12372
4. Minutes of MAPC Meeting

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING DEPARTMENT

DATE August 5, 1982

TO Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT A-95 Review

On July 14, 1982, President Reagan issued an Executive Order that rescinds the requirement for A-95 Reviews on applications for federal funding of various projects and programs. The Order institutes a new policy that allows state governments to establish their own process for reviewing requests for federal financial assistance and direct federal development activities. Local agencies or organizations may be designated by the State as local reviewers for all or some applications. States, who must consult with local governments, have until April 30, 1983 to develop their own rules, regulations and procedures for review of applications for federal assistance and direct federal development activities. Current federal procedures listed in OMB Circular A-95 shall continue in effect until the new rules, regulations and procedures are adopted. Federal agencies would be required to follow the new State process to determine local interest and try to accommodate State and local concerns in proposed programs and projects.

It is our understanding that the Order requires that one of the following will occur:

1. The State totally assumes responsibility for review of federal assistance requests and direct federal development.

2. Designation by the State of a substate or local agency as an area planning organization responsible for review of federal assistance requests and direct federal development.

3. No review at all.

If option 1 or 2 is selected, new rules, regulations and procedures are to be developed by the State and submitted to the Federal Office of Management and Budget (OMB) for approval. OMB will maintain a list of State and local agencies designated by the State to review and coordinate proposed federal assistance and direct federal development. The revised rules, regulations and procedures will become effective on April 30, 1983.

As a result of the Executive Order, State and local clearinghouses have been encouraged to immediately consider what new rules, regulations and procedures, if any, should be adopted regarding the review of applications for federal assistance and direct federal development. If the State adopts a review procedure, it will also be necessary to determine what types of applications should be reviewed at the local level. Recommendations from local governing bodies should be forwarded to the State (the Governor and the Director of Administration) as soon as possible so that they are aware of local interest in this matter and can proceed to formulate a State position on the issue.

There appears to be three basic alternatives available to us. They are:

1. Through the City and County Commission request the State to designate MAPC as the area planning organization to perform the review for those applications affecting Sedgwick County. This would allow the A-95 review process to continue in its present form.

2. Through the City and County Commission request the State to assume total review responsibility.

3. Request the State to drop any requirement for review of applications for federal assistance or direct federal development.

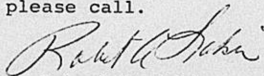
In addition to the number one alternative, it could be recommended that the MAPC be designated as the area planning organization to review only those applications dealing with land use, transportation, utilities, direct federal development, housing, etc. Review of social type programs, such as aging, substance abuse, CETA, etc., could be handled by a local advisory board, such as the Central Plains Area Agency on Aging or the Alcohol and Drug Abuse Advisory Board, for those applications falling within their jurisdiction. Another alternative would be to designate a substate organization, i.e., SCKEDD as the area planning organization for purposes of reviewing federal or federally assisted programs.

Even though the current A-95 review process in Sedgwick

County is somewhat of a routine matter, I feel that there is a definite need for some agency or organization to have the authority to review and coordinate applications for various programs and projects. For those programs and projects that would have a direct affect on local land uses, such as sewers, streets, rural water districts, housing, etc., I feel that the MAPC is the appropriate body to review requests for federal assistance. Programs and projects of a social nature (CETA, aging, drug abuse, etc.), could be passed or handled by a local advisory board that is already established and acting as a coordinating organization, such as the Alcohol and Drug Abuse Advisory Board.

I would recommend that the MAPC request the City and County Commissioners to: 1) formally state that there is a need to have some type of review process for applications for federal assistance or direct federal development; 2) recommend to Governor Carlin that the MAPC be designated as the review agency for Sedgwick County for those applications for federal assistance or direct federal development that would affect land use, the provision of utilities, housing and transportation; 3) recommend that some formal review procedure be established for social type programs and projects at the State and local level; and 4) authorize me and/or a member of the Planning Commission to work with the State in developing rules, regulations and procedures for review of applications.

If you have any questions, please call.



Robert A. Lakin
Director of Planning

RAL:ADC:jps
Attachment
cc: Board of City Commissioners
E. H. Denton, City Manager
Wayne Isaac, Federal Aid Coordinator
Sedgwick County Commissioners
Forest Tim Witsman, County Department of Administration

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

BULLETIN NO. 82-15 July 19, 1982

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Consultation with State and Local Governments on Federally Assisted Programs and Projects

1. Purpose. This Bulletin provides interim policy guidance governing consultation with state and local governments prior to adoption of new regulations implementing Executive Order No. 12372.

2. Authority. Executive Order No. 12372 and the Intergovernmental Cooperation Act.

3. Background. The President has issued an Executive Order entitled "Intergovernmental Review of Federal Programs." The Order institutes a new policy providing elected officials of state and local governments the opportunity to establish their own process for review of Federal financial assistance or direct Federal development activities undertaken by the agencies. It also provides that all Federal agencies shall continue to comply with the requirements of A-95 and their own rules and regulations until new regulations are adopted.

4. Policy.

(a) Agencies are directed by Executive Order No. 12372 to retain their existing A-95 implementing procedures and regulations until new implementation rules and regulations are issued not later than April 30, 1983.

(b) Until new regulations are issued, Federal agencies shall continue to require applicants for Federal assistance to seek reviews through existing state and local review mechanisms established pursuant to Circular A-95, unless a state sets up alternative interim intergovernmental review processes. OMB will inform the agencies of instances where states have made changes in the present A-95 clearinghouse system if such changes occur before the new regulations are issued.

(c) Rules, regulations, procedures, and program guidances for state and local review of direct Federal development projects shall likewise remain in effect. This shall include any memorandums of agreement between agencies, states, and areawide organizations established under Part II of OMB Circular A-95.

(over)

(d) Between now and April 30, 1983, the agencies will work with OMB in developing rules and regulations implementing Executive Order No. 12372.

5. Timing. Agencies shall submit proposed rules and regulations for OMB review during the next several months.

6. Inquiries. For further information, contact James F. Kelly, Deputy Associate Director for Intergovernmental Affairs (202-395-3774).

7. Sunset Date. This Bulletin expires on April 30, 1983.

David A. Stockman
DAVID A. STOCKMAN
DIRECTOR

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EXECUTIVE ORDER

12372

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide 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 or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek 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. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the

rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,
July 14, 1982.

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OF THE FEDERAL REGISTER

Certified to be
a True Copy

FILED IN THE OFFICE
OF THE FEDERAL
REGISTER

JUL 14 3 18 PM '82

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 14, 1982

FACT SHEET ON EXECUTIVE ORDER ON

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

SUMMARY: President Reagan today issued an Executive Order which establishes a new federal policy of consultation and cooperation with state and local governments in the administration of federal financial assistance and development programs. The Executive Order advances the Administration's New Federalism and regulatory relief initiatives in several important ways.

Under the new Order, federal agencies are required to make every effort to accommodate the recommendations of state and local governments concerning federal programs affecting their jurisdictions. Federal agencies are required to defer to the states' own procedures for developing such recommendations; to inform state and local elected officials of proposed federal actions as early as possible; and, where state and local recommendations cannot be accommodated, to explain why in a timely fashion. The Order also contains provisions to strengthen the authority of state and local elected officials and encourage simplification of state planning requirements imposed by federal laws.

BACKGROUND: The Executive Order substantially revises the current system of intergovernmental consultation over federal grant and development programs. The old system, under OMB Circular A-95, required state and local governments to follow prescribed review procedures and to review specified federal programs. The system also required review of federal programs by state and local agencies without regard to the priorities of their elected leadership.

-MORE-

The A-95 process became highly bureaucratic and burdensome. Under Circular A-95, annual reviews of over 100,000 grant applications created a staggering paperwork burden costing over $50 million each year--with little positive return to state and local governments and their citizens. The new Executive Order directs the revocation of Circular A-95, and shifts the initiative for setting review procedures and priorities to the states and localities. This shift will:

- o Provide states the opportunity to establish their own review and coordination procedures, which must be recognized by federal agencies;
- o Encourage more timely and effective participation by state and local elected officials in federal decisions concerning programs and projects within their jurisdictions;
- o Reduce federal regulatory requirements; and
- o Strengthen State and local governments by diminishing the influence of special purpose agencies created primarily to administer federally funded programs.

SCOPE: The Executive Order covers the federal activities listed below. A state's review process may cover all or only some of these activities, based on the priorities of state and local officials.

- o All categorical grant-in-aid programs identified in the Catalog of Federal Domestic Assistance;
- o Research and demonstration programs affecting states or municipalities;
- o Assistance in the form of loans or loan guarantees;
- o All federal real property acquisition and construction activities, including Corps of Engineers projects and military bases;
- o Major changes in the use of land, water, or real property owned or leased by the federal government;
- o The issuance or modification of licenses and permits; and
- o Planning requirements mandated by the federal government.

-MORE-

The Order is not applicable to the following federal activities:

- Proposed federal legislation, regulations, and budget formulation;
- Direct payments to individuals;
- Financial transfers for which federal agencies have no funding discretion or direct authority to approve specific sites or projects (i.e., block grants, revenue sharing, etc.); and
- Classified programs or activities where formal consultation would endanger national security.

Federally recognized Indian tribes are exempted from the requirements of the Executive Order.

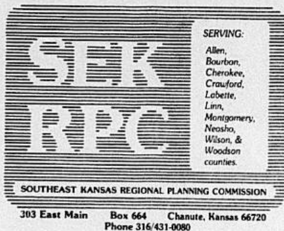
IMPLEMENTATION: State and local governments are encouraged to fashion their own procedures (or to refine existing ones) for reviewing and making recommendations on financial assistance and direct developments proposed by the federal government. States must consult with local governments in establishing the procedures recognized by the Executive Order, and may delegate, in specific instances, review and recommendation responsibilities to local elected officials. The new Order is consistent with the Administration's view that local elected officials should work together in solving their common problems.

Federal agencies will examine present consultation procedures and eliminate repetitive and prescriptive requirements wherever possible. Where existing statutes provide for consultation with state and local governments consistent with the policies of the Executive Order, no new regulations will be required. Federal agencies will also permit states to simplify and consolidate federally required state plans, and will discourage the creation or reauthorization of special-purpose planning organizations that are federally funded, have federally prescribed memberships, or are not adequately accountable to state or local elected officials.

The Office of Management and Budget will maintain a listing of the review procedures adopted by the states and oversee federal implementation of the Executive Order.

Federal agencies will begin to use the new consultation procedures not later than April 30, 1983. Existing regulations under OMB Circular A-95 will remain in force until then. By this date, states should have notified OMB of their designated consultation procedures or have decided not to participate.

# # # # #



303 East Main Box 664 Chanute, Kansas 66720
Phone 316/431-0080

RECEIVED
AUG 2 1982
METROPOLITAN PLANNING
ROUTE

To: Kansas Regional Planning Commissions

From: Ethan Z. Kaplan, Executive Director *Ethan*

Date: July 30, 1982

RE: <u>ENCLOSED RESOLUTION ON A-95</u>

The enclosed resolution was sent to Governor Carlin and Lynn Muchmore after being adopted by our Board. It represents the view of this Commission, but we do hope you share our concern. In addition to suggesting that your Commission support this activity, we do feel the KARPC Board should also concern itself with this issue.

It is our understanding that we do need to act quickly to let Lynn Muchmore and Governor Carlin know of our interest. This need for a quick response was the reason for our action. If you do not have a copy of President Reagan's Executive Order, let me know.

303 East Main Box 664 Chanute, Kansas 66720
Phone 316/431-0080

July 30, 1982

The Honorable John Carlin, Governor
State of Kansas
Second Floor, Statehouse
Topeka, KS 66612

Dear Governor Carlin:

On behalf of the Board of the Southeast Kansas Regional Planning Commission, I have enclosed a formal resolution adopted by the governing body at their July 29, 1982 meeting.

This resolution expresses our concern regarding President Reagan's Executive Order No. 12372 of July 14, 1982, revoking OMB Circular A-95. It is our understanding that this order requires that the state either totally assume A-95 review, continue the Areawide review at the state's option, or not review at all. This decision is to be made by April 30, 1983.

In this region, local officials have been intimately involved in the A-95 review of federal applications through their participation in the monthly open hearings on all applications for federal funding and in their response to specific requests for comments. Our regional commission is one of the few in Kansas to hold monthly meetings of the full General Assembly; not just the Executive Committee. The A-95 Review process has been an integral part of these meetings.

This Commission has supported the A-95 activity primarily through local dues contributions, not federal funding. We will continue to provide this service if given the opportunity. It is our understanding that the state can inform OMB of its intention to continue this local activity and all federal agencies will then inform applicants to continue to submit their material to the local Areawide Agency. This will insure continuation of what, in our area, has been a most efficient major communication and coordination tool for local governments.

In this region we have enjoyed excellent relations with the State A-95 Clearinghouse, particularly the Coordinator and also the Director of the Division of the Budget. We feel the input of our local officials can be of benefit to them in their future A-95 review activity.

Thank you for your review of this resolution. Please feel free to have your office call on us if we can provide any further information.

Sincerely,

Ethan Z Kaplan
Ethan Z. Kaplan
Executive Director

EZK/jap

Enclosure

cc: Lynn Muchmore
George Vega

A RESOLUTION
OF THE
SOUTHEAST KANSAS REGIONAL PLANNING COMMISSION

Whereas, the Planning Commission, serving ten member counties and seventy-three cities, has served since its inception as the Areawide A-95 Clearinghouse, and

Whereas, said Commission has reviewed all applications at full open hearings before a body of local elected officials, representing ten counties and, in addition, has submitted these applications for comment to appropriate governing bodies prior to the hearings, and

Whereas, this process has allowed full input from local officials and, in many instances, has resulted in improved and coordinated utilization of federal and state funds, and

Whereas, the continuation of this local review pursuent to President Reagan's Executive Order #12372, is a decision to be made by the state;

Now Therefore, the Southeast Kansas Regional Planning Commission petitions the Governor and the Bureau of Budget to establish an A-95 process which continues the use of the existing Areawides, and to so notify relevant federal agencies and the U.S. Office of Management and Budget of this decision.

For the Southeast Kansas
Regional Planning Commission

Jesse Jackson

Jesse Jackson, Chairman
July 29, 1982

Attest:

Ethan Z. Kaplan

Ethan Z. Kaplan
Executive Director

Pankratz — [illegible] — Alice Kitchen
Hamp McDowell — Chris McKenzie
Conroy — Ethan
Lynn Muchmore — Dave from KDOT
Al ______

How State clearing house would work with Local clearinghouse

What programs

Hamp CDBG should be reviewed.

KDOT exempt some projects
any project that originates with local govt be exempt

project that needs EIS should be reviewed.

suggestion of 45 review period

suggestion
Basically KDOT would drop notifying county of projects that do not require EIS. Would get info from County Engineer

Hamp drop A-95 review of KDOT UWP TIP
for metro areas that are MPO

drop local origination projects for KDOT
also drop resurfacing & rehabilitation projects

Committee agreed that review was not needed — some areas might want to be notified

2 ~~sta~~ subcommittees State
Locals } meet between now and July to develop position

Review final regs
meet in July as a whole

Scope
relationship Local State
State Federal

State will ~~let~~ get State Clearinghouse
functions & position clarified

list of programs to be included or excluded
will probably remain

some HUD programs/grants will be included

WASHINGTON REPORT

LAST — ~~Lucs~~ ~~Cal~~

April 15, 1983

SPECIAL REPORT

PRESIDENT AMENDS E.O. 12372, EXTENDS EFFECTIVE DATE FOR REGS

President Reagan has issued a new Executive Order (E.O. 12416) amending E.O. 12372 which provides for a successor program to the A-95 intergovernmental review process.

E.O. 12416 was published in the Federal Register on April 11. It extends the deadline for implementation of proposed agency regulations under E.O. 12372 (published January 24, 1983) from April 30 to September 30. In addition, it recognizes that Section 204 of the Demonstration Cities Act* must be a primary consideration in the promulgation of any regulations to implement the E.O.

The amendment is OMB's first step toward responding to the many substantive concerns raised by NARC over the last two years as OMB sought to revise A-95. Important assistance in this effort to get OMB to recognize that the E.O. and its proposed implementing regulations had serious defects, came from Senate Intergovernmental Relations Subcommittee Chairman Dave Durenberger (R-Minn).

Councils Should Position Themselves To Protect Their Rights

The extension of the effective date for the regs to September 30 presents more time for you to work with your state to develop a statewide intergovernmental consultation process. Moreover, the recognition of Section 204 as key to the development of federal regs affecting such processes is expected to trigger significant changes in the proposed federal implementing regs.

Unless you are very comfortable with the process that has been worked out in your state, you should move slowly toward any agreement on this issue. Unless you are certain that your rights will be protected under the system your state has outlined, you should delay agreement until after the final regulations are published on June 30. You will have from June 30 until September 30 to work with your state to develop a process that ensures your rights. (See NARC

NATIONAL ASSOCIATION OF REGIONAL COUNCILS

1700 K STREET, N.W., WASHINGTON, D.C. 20006 • (202) 457-0710

March 28 Memo To Executive Directors - Re: Latest Activity on A-95 Successor.)

Meanwhile, the existing regulations governing A-95 remain in effect until September 30. In addition, OMB plans another public hearing to discuss the modified regs that they hope to publish within the next few weeks.

We will keep you posted.

OMB TIMETABLE

April 8	E.O. 12372 amended. A-95 remains in effect until 9/30/83.
April 8	Mailgrams to Governors announcing amendment and extension.
April 21	Info on areas of possible changes in regs will be published in Federal Register. Also announcement of a public meeting to discuss proposed changes.
May 5	Public Meeting.
May 19	Closing date for comments on proposed changes.

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*Section 204 is a general coordination requirement that preceded Title IV of the Intergovernmental Cooperation Act; it applies to providing federal assistance within the 237 metro areas of the country. It is self-executing and requires that federal grant applications in such areas have their funding proposals reviewed by metropolitan planning organizations to determine if they are consistent with development planning for the area.

on A-95

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Federal Register
Vol. 48, No. 70
Monday, April 11, 1983

Presidential Documents

Title 3—

The President

Executive Order 12416 of April 8, 1983

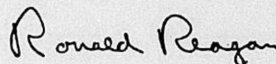
Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

Section 1. The preamble to Executive Order No. 12372 of July 14, 1982 is hereby amended by inserting, after the words "42 U.S.C. 4231(a))", the following phrase: ", Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

Sec. 2. Section 5(b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

Sec. 3. Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984".



THE WHITE HOUSE,
April 8, 1983.

OFFICE OF MANAGEMENT AND BUDGET

Intergovernmental Review of Federal Programs; Implementation of Executive Order 12372

AGENCY: Management Reform Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice of implementation changes.

SUMMARY: Executive Order 12372, "Intergovernmental Review of Federal Programs," was signed by President Reagan on July 14, 1982. Section 5 of the Order called for final agency rules effective April 30, 1983. Based on numerous public comments on agency proposed rules requesting more lead time for state and local implementation, today's Federal Register includes an amendment to this Order to change the effective date for the final rules to September 30, 1983. In addition, final rules will be issued by June 30, 1983 to allow at least 3 months lead time. In accordance with Section 7 of E.O. 12372, regulations implementing former OMB Circular A-95 will remain in effect until September 30, 1983.

Another public meeting to discuss contemplated, possible changes in agency proposed rules in response to public comments will be announced shortly.

Dated: April 8, 1983.

Harold I. Steinberg,

Associate Director for Management.

[FR Doc. 83-9673 Filed 4-8-83; 12:09 am]
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EXECUTIVE ORDER

12372

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide 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 or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(over)

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek 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. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the

(over)

rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,

July 14, 1982.

RECEIVED IN THE OFFICE OF THE FEDERAL REGISTER

Certified to be a True Copy

IN THE OFFICE OF THE FEDERAL REGISTER

JUL 14 3 18 PM '82

Single point of contact

Final rule will be effective immediately upon its publication on april 30

State sends a list of programs that would be covered.

local elected officials

still 30 day review

Exclusions generally insurance programs, or grants to individuals

FROM ~~[handwritten initials]~~ DATE

ADMINISTRATION	ADVANCE PLANS	CURRENT PLANS	GRAPHICS
☐ Lakin	☒ ~~[struck out]~~	☒ ~~[struck out]~~	☐ Pierce
☐ Walter	☒ ~~Schwartz~~	☐ Lytle	☐ Commer
☐ Doramus	☒ ~~Calvo~~	☒ ~~Young~~	☐ Crook
☐ Eubanks	☐ Bechtel	☒ Chambers	☐ Garland
☐ Hanson	☐ Curfman	☐ Fleck	☐ Singhal
☐ Henderson	☐ Dudark	☐ Nagley	☐ Whitney
☐ Lakin, E.	☐ Flynn	☐ Olivarez	☐ —
☐ Nelson	☐ Hart	☐ Shirkey	
☐ Scott	☐ Losew	☐ McDonald	
☐ —	☐ Shen		
	☐ Spain		
	☐ Vinson		
	☐ —		

- ⊘ Note & Return *To Out*
- ○ Handle
- ○ All Staff
- ○ Comment
- ○ Signature
- ○ Library
- ○ Information
- ○ Files

REMARKS

T9-105

2/8/83

RAL

Re: HHS proposed rules
for intergovernmental review

The type of programs proposed to be covered (attachment B) doesnt appear to be different then the ones that are currently covered

These proposed rules place the responsibility of who finally chooses the program with the state. In addition the state will establish the "rules" for the comment and review process. HHS wants to talk to a "single point of contact" at the state level. Thus we would receive proposals from the state and have to forward our comments to the state who would then make an official reply to HHS.

Section 100.7, Para (B) (paper clipped page) states that if HHS intends to fund an application over the state's objections that it will notify the state and wait 10 days.

Has the state prepared any draft review and comment procedures? No Since the deadline to return these to the Feds it would be nice to get them to review by the end of this month.

Art

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

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

45 CFR Parts 100, 224, 1351

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

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement Executive Order 12372, "Intergovernmental Review of Federal Programs." It applies to Federal financial assistance and direct Federal development programs and activities of the Department of Health and Human Services. Executive Order 12372, and these proposed regulations, are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They provide for a new, more effective, intergovernmental consultation system. Under the Order, state and local elected officials, not the Federal government, will determine what Federal programs and activities to review and the procedures by which the review will take place.

DATE: Comments must be received on or before March 10, 1983.

ADDRESS: Interested persons should submit comments in writing to Gordon Boe, Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs, Room 632-F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. Monday through Friday.

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

SUPPLEMENTAL INFORMATION:

Background

For many years, consultation between state and local officials and Federal agencies concerning Federal programs and activities has taken place through an elaborate regulatory and organizational framework created under OMB Circular A-95. The A-95 system required state and local governments to follow prescribed review procedures and to review specified Federal programs, regardless of the circumstances affecting particular state and local governments. The system also required review of Federal programs by state and local agencies without regard to the priorities of their elected leadership. The A-95 process became highly bureaucratic, burdensome, and costly. States and localities had to process too much paperwork, and, as a result, the impact of substantive comments was sometimes lost. A network of state and area clearinghouses was created to manage this paperwork. State and local elected officials found it difficult to exert significant influence on Federal decisions through this system, and Federal agencies found the system a cumbersome method of obtaining information about, and responding appropriately to, state and local concerns.

On July 14, 1982, President Reagan signed Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order is reproduced as Attachment A to the OMB notice published in today's Federal Register. The Order directs the revocation of OMB Circular A-95, and provides for a new, more effective, intergovernmental consultation system that is consistent with the President's policies concerning Federalism and regulatory relief. Under the Order, states and localities will take the initiative for establishing review procedures and priorities. State and local elected officials, not the Federal Government, will determine, within the scope of the Order, which Federal programs and activities to review and the procedures by which the review will take place. When state and local elected officials bring their concerns to a Federal agency's attention through this process, the agency will have to make efforts to accommodate the concerns, and, if it does not accommodate them, explain why not. This "accommodate or explain" provision gives greater weight to state and local views than Circular A-95 did. In addition, states will have the opportunity to the extent permitted by law, to simplify, consolidate, or substitute Federally required state plans.

Across the whole range of Federal programs and activities, the Federally required procedures for consultation under Circular A-95 created a substantial regulatory burden. The Executive Order's system of consultation will significantly reduce that burden, as well as opening opportunities for states to reduce administrative burdens in Federal programs requiring state plans. In contrast to the A-95 system, which relied heavily on clearinghouses, planning organizations, and other bodies which are not elected by the jurisdictions they serve, the Order, consistent with the President's Federalism policy, emphasizes the role of elected state and local officials.

OMB Guidance to States

In order to assist states as they begin their work in implementing the Order, OMB wrote on or before today to each state concerning the establishment of an official state process. This letter will be reproduced in the Federal Register in the next few days. This letter explains the role of the "single point of contact." A "single point of contact" is the one office or official in a state that transmits the result of the state review and coordination with recommendations that differ from the Federal proposal to the Department and other Federal agencies and to which the Department directs official communications (e.g., explanation of nonaccommodation) to the state under the Order. A state may have as few or as many entities as it chooses to perform review and coordination and to conduct discussions with the Department. However, there should be only one point of contact to officially transmit recommendations for change to all Federal agencies under the Order. It is up to the state whether the single point of contact plays a substantive role with respect to the state's views, or simply acts as a focal point for official communications.

It is also worth emphasizing that states are not required to adopt an official state process at all. However, after final rules implementing the Order become effective (they will be published on or about April 30, 1983), the existing Federal A-95 consultation regulations will no longer be in effect. Other existing statutory consultation requirements are not affected by this proposed rule. An inventory of these existing requirements will be available.

This Department and other Federal agencies have the basic responsibility of ensuring that their programs and activities are carried out in conformity with the Order's provisions. OMB will have general government-wide oversight responsibility for the implementation of the Order, but will not attempt to exercise any day-to-day, operational control of agency actions. Nor will OMB act as a forum for "appeals" of agency actions by non-Federal parties.

Development of Proposed Regulations

If the objectives of the Executive Order are to be met, Federal agencies must ensure that they deal with state

and local elected officials in a consistent and understandable way. To this end, the Federal agencies affected by the order have worked together to make common policy decisions and, to the extent feasible, to draft common regulatory language. The agencies involved chose an approach that minimizes the imposition of regulatory requirements on non-Federal parties. For the most part, these proposed regulations will spell out the Department's obligations and procedures in response to the views expressed by state and local elected officials. A paper discussing the policy decisions made by the agencies and OMB was made available to the public on December 23, 1982 (47 FR 57369). Following the close of the comment period, the agencies will again work together with the aim of promulgating final rules that are substantially consistent with one another. It is the Federal Government's intention that there will be no further rulemaking with respect to this Executive Order.

The Executive Order mandates the implementation of final regulations by April 30, 1983. It will not be possible to have an adequate comment period and meet this deadline if the normal 30-day delay between the publication date of a final rule and its effective date is observed. Consequently, the Department proposes to make the final rule effective immediately upon its publication on April 30.

As a matter of style, the proposed rules use the present tense when describing the Department's obligations. For example, when the proposed regulation says that the Secretary "provides the state with a timely explanation," the regulation requires the Secretary to do do.

Removal of Regulations Implementing OMB Circular A–95

In connection with this proposed rulemaking, the Department is proposing to remove its existing regulations implementing former OMB Circular A–95. Executive Order 12372 directed OMB to revoke the Circular itself, and the OMB directive revoking the Circular told Federal agencies to leave their A–95 regulations in place only until new regulations implementing the Order were promulgated on April 30, 1983. In order to carry out this directive, the Department is listing in this notice those regulatory provisions implementing Circular A–95 that it proposes to remove. Final rules carrying out the removal will be published on or about April 30, 1983, in conjunction with the Department's final rule implementing Executive Order 12372.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

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

Section-by-Section Analysis

Section 100.1 What is the purpose of these regulations?

This section briefly states the purpose of the regulations, which is to implement Executive Order 12372 and foster an improved system of intergovernmental consultation. Paragraph (c) states the important point that the Order, and these regulations, are intended only to improve the Department's internal management of its consultation with state and local governments. Neither the Order nor these regulations are intended to create any right of judicial review of the Department's action. For example, it is not intended that a state or local government would have the right to sue the Department because the Department failed to explain a nonaccommodation of a state recommendation.

Section 100.2 What definitions apply to these regulations?

This section defines several terms used frequently in the proposed rule. "Department" means the Department of Health and Human Services. "Order" means Executive Order 12372. "Secretary" means the Secretary of Health and Human Services or an official or employee of the Department acting under a delegation of authority from the Secretary. This does not mean that there must be a new, specific, formal delegation pertaining to Executive Order 12372. Any official who has existing authority to act concerning a program or activity under a delegation could act under the Order concerning that program or activity. "State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. The definition of "state" means that the District of Columbia, Puerto Rico, and the other jurisdictions mentioned may create an official consultation process and consult with Federal agencies on the same basis as each of the 50 states.

In addition to these definitions, three other terms—simplify, consolidate, and substitute—are defined in § 100.9, State Plans. Several other terms appearing in the Order are not defined in this section, but are used in the regulation in a way that makes their operational meaning clear (e.g., accommodate and explain in § 100.7).

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

Attachment A lists those programs which the Department believes to be outside the scope of the Order. Attachment B lists those programs that the Department proposes to be subject to these regulations.

The programs followed by an asterisk (*) in Attachment B are closed-ended formula grant programs to the states. Although they are subject to these regulations, it should be noted that the Department has no discretion under these programs concerning who will receive the grants (the states are the only eligible applicants), the amount of funding to be provided to each grantee (the distribution of funds is established by statutory formula), the selection of specific sites or projects (the states make those decisions), or whether to provide funding (the states are entitled to receive program funds as long as they meet the legal requirements of those programs). The Department reviews the state plans mandated by the formula grant program statutes only to ensure that they meet the requirements established by those statutes and their implementing regulations. However, to the extent that the department has any discretion with regard to the formula grant programs, they are subject to these regulations.

The Department emphasizes that the plans required by the formula grant programs in Attachment B are eligible for simplification, consolidation and substitution under the provisions of § 100.9 of these regulations. Moreover, a state may, when legally permissible, choose to use its own consultation process developed under the Order to assist in developing the plans, provide opportunities for state and local officials to review the plans before they are

submitted to the Department, and submit the plans through its "single point of contact." The Department will then review the plans to ensure that they meet the statutory and regulatory requirements, and inform the state's single point of contact (or the relevant state agency if the plans are not submitted through the single point of contact) when the plans are approved. If modifications are needed to meet the legal requirements before the plans can be approved, the Department will inform the state of the changes that need to be made.

In developing Attachment A, the Department examined its programs and activities in light of the provisions of the Executive Order, the Fact sheet that accompanied the Order, and the non-binding criteria that were used by Federal agencies in their determinations. The Department believes that the programs listed in Attachment A are outside the scope of the Executive Order. The reasons for the Department's decisions are identified in Attachment A. Comments are invited regarding these programs.

The Department's open-ended entitlement programs (Medicaid, State Health Care Providers Survey, Medicaid Fraud Control, AFDC, State and Local Training under AFDC, Child Support Enforcement and Foster Care) are not subject to these regulations for the following reasons: (a) The Department has no discretion with regard to funding; and (b) the state plan requirements for these programs are set by statute and regulation to a much greater degree than the other programs requiring state plans.

In addition, activities and programs that clearly are neither Federal financial assistance nor direct Federal development (e.g., procurement by the Department) are not subject to the Order. Also, the Order and these regulations do not apply to proposed regulations, legislation, or budget formulation.

After the promulgation of the final rules, updated lists will be published when necessary, in order to let the states know which programs they may choose to cover. Comments will be requested on any new or additional programs that the Department believes should not be subject to these regulations.

Even if a program or activity is not subject to these regulations, state and local officials would still have opportunities to have their views considered by the Department. Indeed, statutory requirements for consultation, such as section 401(b) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)), require Federal agencies to consider the views of state and local governments. Many of the Department's program statutes have their own consultation requirements, and the Department will, of course, comply with all existing or future statutory requirements of this kind. However, the Department is not obligated to follow the provisions of the Order and these regulations with respect to excluded programs or activities.

Paragraph (b) simply states the Secretary's obligation, to the extent permitted by law, to use a state's official process to determine official views of state and local officials. This obligation, which derives directly from the Order, extends only to programs and activities subject to the Order which a state has selected for coverage under § 100.5 of these regulations. If at any time a state believes that any official of the Department has not made appropriate us of the official state process, the state is invited to raise its concerns directly with the Secretary.

Section 100.4 [Reserved]

Section 100.5 What procedures apply to a state's choice of programs under the Order?

State may choose to consult with the Department under the Order concerning any of the Department's programs and activities that the Department's Federal Register notice on or about April 30, 1983 lists as subject to the Order. However, these regulations do not require states to consult with the Department concerning any particular program or activity. This is an important distinction between the Order's consultation policy and the system established under Circular A-95, which gave states no discretion concerning program selection. Under the Order, each state may choose whether to use the consultation system with respect to any particular program or activity. This gives states increased flexibility to determine how best to allocate their resources. For example, many programs have existing statutory consultation systems. If a state decides that an existing consultation system is adequate, the state might choose not to cover the program under its E.O. 12372 process, thereby avoiding duplication and saving resources for use on other programs. A state also might want to decline to cover a program which has only minor effects on the state and its people.

The Department emphasizes that the choice of whether to cover a particular program or activity listed in the Department's Federal Register notice is entirely up to each state. While the Department will be happy to discuss with states the most effective ways of carrying out consultation concerning its programs and activities, the Department will not attempt to constrain the state's discretion with respect to program selection.

Paragraph (a) of this section sets out a purely administrative requirement pertaining to program selection. The state must notify the Secretary of the programs and activities it chooses to cover. When it first establishes its official process, the state can meet this requirement by sending to OMB, along with other information required to establish the process, a list of the Federal programs and activities it wishes to cover. OMB will inform each Federal agency of the programs and activities of each that the state has chosen to cover. Subsequently, the state should send all program coverage information (additions, deletions, other changes) directly to the Department. This information will enable the Department's personnel who work on a particular program or activity to know which states they must consult with under the provisions of the Order.

Paragraph (b) provides that, once a state has established a process and made its program selections known to the Department, the Department will use the state's process concerning the programs and activities selected by the state as soon as feasible. While the Department will make every effort to use the state's process, there may be situations, on individual programs or projects, where the Department may not be able to do so for a time. The Department will make determinations concerning when to begin using the state's official process on a case-by-case basis and will let the states know when it will start to use the state process.

Paragraph (c) provides that the Department may establish deadlines by which states must inform the Department of changes in their program selection choices. A state may add or delete a program or activity from those it wishes to cover under the Order at any time. However, in order for meaningful consultation to occur under the Order, the department may need a certain amount of "lead time" before it can adapt its procedures to the changed circumstances. For this reason, the Department may find it necessary to establish deadlines for program selection changes. These deadlines would simply be notifications to the states that, for example, if they wished to have consultation under the Order begin with respect to a particular program on a given date, they would

have to inform the Department of their program selection change a certain time (e.g., 30 days, 45 days) prior to that date.

Section 100.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

Paragraph (a) points out that the Order would apply not only to comments prepared pursuant to the official state process but also to comments formulated by local elected officials to whom the state's consultation role has been delegated in specific instances. Section 3(a) of the Order permits states to delegate, to local elected officials in specific instances, the review, coordination, and communication with Federal agencies that normally take place under the state process. This means that states may choose not only which programs and activities to cover but also who within the state has the opportunity to carry out the consultation. States have complete discretion concerning delegation of their consultation role.

For example, a state could delegate to a single mayor the state's consultation role with respect to a project occurring in his or her city. The state could delegate all consultation under a particular program to officials of the local governments whose jurisdictions are affected by projects under the program. The state could delegate its consultation role for a particular program to local elected officials in cities above 250,000 population but not to local officials in smaller jurisdictions, or vice versa. In any case of delegation, the local official to whom the state's consultation role is delegated stands in the shoes of the official state process with respect to the Department. For example, efforts by the Department to reach a negotiated solution with the local official will be pursued directly with the official, not with the state itself.

The local official to whom the state's consultation role had been delegated would not send his or her comment directly to the Department. Rather, the official would send the comment to the Department through the state single point of contact. The Department would work with the local official in attempting to reach an accommodation, but, if efforts at accommodation were unsuccessful, the Department would explain the nonaccomodation to the single point of contact. Routing the delegated comment through the state single point of contact would alert the Department to the fact that the local official's comments should be dealt with under the provisions of the Order and make unnecessary a separate communication from the state to the Department informing the department that the comment was an official comment of the state.

Section 2(b) of the Order requires Federal agencies to communicate with state and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions. Paragraph (b) incorporates this provision of the Order into these regulations. What the requirement means is the Department is obligated to make efforts to ensure that information on proposed actions or decisions of the Department is available to the states in sufficient time to be able to exert meaningful influence on the Department's course of action. For example, the department would make sure that the state learned of assistance announcements, proposed Federal development project decisions, and so forth, in time to make a meaningful response.

It is difficult to specify, in advance, the precise time frames that will implement the Order's notification requirement for the Department's widely varied programs and activities. However, paragraph (c) states that, as a general rule, states choosing to cover a particular program or activity will have at least 30 days (45 days in the case of interstate situations) to comment on proposed Federal financial assistance or direct Federal development before the Department commits itself to a given course of action. The Department, on a case-by-case basis, may allow a shorter period for comment if unusual circumstances make the shorter period necessary. Among the kinds of unusual circumstances that might necessitate a shorter comment period are an emergency, the necessity to make a grant or cooperative agreement decision before the end of a fiscal year, or a statutory deadline.

In order to meet the Order's objective of ensuring states a meaningful opportunity to influence decisions by the Department, the Department may need to establish deadlines or time frames, in non-regulatory program-specific announcements, for comment on particular actions or types of actions. Consequently, as provided in paragraph (d), the Department may define, for its varying programs and activities, the length of comment periods and the starting points from which comment periods would begin to run. States and localities would still have at least 30 days to comment (45 days in interstate situations), except under unusual circumstances. For example, time frames may differ among different types of programs (e.g., one-year grants, multi-year grants, direct development projects), for different stages of the same program (e.g., first application, renewal), or at different times (e.g., end of fiscal year, deadline for quarterly apportionment).

In some of the Department's programs, a basic decision to go forward with a project may be the key decision that determines a subsequent course of action by the Department. Once the initial decision is made, the Department has little discretion with respect to the subsequent decisions. The Department could inform states of the key decision points on which their comments are essential if the states are to have a meaningful role in influencing the Department's decision.

In most financial assistance programs, a state, local, or private agency applies to the Department for a grant or cooperative agreement or otherwise seeks Departmental approval for financial assistance to be provided. In order to receive notification of applications for financial assistance from the Department, the state should work with applicant organizations to ensure that applications are provided to the state in a timely manner. If it becomes necessary, the Department may establish requirements, in non-regulatory program-specific announcements, for applicants to submit copies of their application to the state.

In order to ensure timely completion of Federal decisionmaking, the Department may require states to complete their reviews of applications and to submit their comments to the Secretary by a particular date. The intent of this provision is to prevent undue delays in Federal decisions affecting the state. A similar provision, in paragraph (d)(3), permits the Secretary to establish deadlines, in non-regulatory program-specific announcements, for state review of the Department's direct development activities.

Paragraph (e) makes an important point with respect to the way that communications between states and the Department would work. Under the Order, a state may organize the mechanics of its consultation process any way it chooses. However, in order to ensure that communications between the Department and the official state process flow efficiently, the Department strongly encourages states to establish a "single point of contact" for state communications with Federal agencies. Channeling communications from the states to Federal agencies and from

agencies back to the states through a single point has obvious benefits from the point of view of administrative simplicity. In addition, it will enable the Department to know which communications to treat as official under the provisions of the Order. The Department needs a means of separating the letters from state and local elected officials to which it will respond through normal correspondence channels from those letters to which it must respond under the provisions of the Order. State's use of a single point of contact will permit the Department to make this necessary administrative distinction.

In the absence of a state process, or with respect to a program that a state has not selected for coverage, the Department will work with the state, consistent with existing legal requirements. The provisions of the Order and these regulations will not apply, however.

The proposed regulation would not impose any constraints on the content of comments that states send to the Deparment. However, the Department would strongly encourage commenters under the Order to follow three policies which are important for the efficient operation of the Order's consultation system.

First, comments should address statutes, regulations, and other requirements governing a specific program or decision. Often, the Department is required to make a decision based on certain statutorily established factors. In other cases, the Department, through regulation or guidance, has established decisionmaking criteria for various actions. It is unlikely that the Department would be able to accommodate concens that do not address these requirements and standards, or which are not relevant to the decisionmaking process. In order to have meaningful influence of the Department's decisions, comments must be relevant to the factors on which the Department bases its decisions. For example, if the Department's standards call for a decision to be made at certain stage only on the technical merits of financial assistance proposals, before consideration is given to costs, the Department could not accommodate a state comment addressing costs during the technical review.

Second, states can assist the Department's implementation of the Order by clearly specifying the magnitude of the state's concerns. Often, it may be difficult for the Department to tell whether a state is firmly recommending a given course of action, has a mild preference for or reservation about the action, or is simply seeking clarification of the Department's position. For example, if a state wants the Department ot recognize the state's priorities, accept only a modified financial assistance application, or deny a financial asisstance application, it would be very helpful if the state identifies its position as clearly as possible. The Order directs Federal agencies to make efforts to accommodate state concerns. The Department's ability to do so successfully is dependent, to a significant degree, on the clear articulation of concerns by the states.

Third, the Department may not be in a good position to accommodate state and local concerns unless the state speaks with one voice in its comments. The Department recognizes that different state and local officials and agencies may not always agree among themselves concerning the course of action the Department should follow. The single point of contact should reconcile conflicting views before transmission to avoid the Department's having to seek clarification concerning which set of views the state wants the Department to accommodate. The process will work much better if the Department receives a single set of comments.

Section 100.7 How does the Secretary make efforts to accommodate state and local concerns?

Paragraph (a) provides that when a state comments to the Department under the Order, the Department has three choices. The Department can accept the state's comments (i.e., do as the state recommends). Second, it can reach a mutually agreeable solution with the state. This solution can differ from the original state position on the matter. Third, if the Department cannot accept the state's comments or reach a mutualy agreeable solution, the Department is obligated to give the state a timely, simple explanation of the Department's reasons for not doing so. While the Department is not required to accept the state's comments or to begin discussions towards another solution, the Department does have an obligation to provide a simple explanation of its decision.

Normally, the explanation could take any form which adequately communicates the Department's reasons for its decision to the state. A telephone call, a meeting, or a letter would perform this function. The Department has the discretion to choose the most appropriate mode of communicating the explanation in each case. The explanation is made by a designee of the Secretary.

There is one exception to the Department's discretion to choose the mode of communicating the explanation. As paragraph (a)(3)(ii) provides, the Governor of the state may request, in advance of the time the explanation is made or after it is communicated to the single point of contact, that an explanation of nonaccommodation be made in writing. When it receives such a request from a Governor, the Department's explanation will be in a letter.

Paragraph (a)(3)(iii) spells out the role of the single point of contact in receiving explanations from the Department. The Department will direct all such explanations to the single point of contact in each state that has one. This is true even where accommodation discussions have occurred between the Department and another party in the state.

Paragraph (b) concerns safeguards to ensure that the interests of states are protected in nonaccommodation situations. Paragraph (b)(1) provides that a nonaccommodation explanation will state that the Department will not implement its decision until ten days after the single point of contact receives the explanation, except as provided in paragraph (b)(2). This waiting period is intended to permit states to respond to the Department in cases of nonaccommodation before the Department has awarded a grant or cooperative agreement, begun construction of a facility, or otherwise irrevocably carried out the decision. In a case in which the Department has provided a verbal explanation of a decision to the single point of contact, and the Governor subsequently has requested a written explanation, the ten-day period will start to run from the date of the original explanation to the single point of contact.

Paragraph (b)(2) recognizes that there will be some situations in which the Department cannot observe the ten-day waiting period. These unusual circumstances could include, for example a statutory deadline, emergency, or end of a fiscal year situation that may make it infeasible for the Department to wait ten days before implementing its decision. In a situation where the Department cannot observe the waiting period, the Secretary or a designee of the Secretary at a higher level than the official responsible for making the original decision will review the decision before the nonaccommodation explanation is made and before the Department implements

the decision. The nonaccommodation explanation will include the Department's reasons for determining that the ten-day waiting period is not feasible.

Section 100.8 What are the Secretary's obligations in interstate situations?

In some cases, action taken by the Department in Federal financial assistance and direct Federal development programs may have an impact on interstate areas. In these situations, the Department has certain additional obligations. First, the Department must identify its direct Federal development or Federal financial assistance actions or decisions that have an impact on interstate areas. Having done so, the Department must, as provided in paragraph (b), notify the potentially affected states, whether or not they have established an official state process under the Order. Except in unusual circumstances (e.g., emergencies, financial assistance awards at the end of the fiscal year), the Department must provide the affected states an opportunity for comment of at least 45 days before the department commits itself to a course of action. The increase in the minimum comment period from 30 to 45 days in interstate situations allows extra time for states to coordinate among themselves before providing views to the Department.

The Department, obviously, cannot require states to coordinate with each other on proposed Federal assistance or direct development having an impact on an interstate area. However, the Department strongly encourages each affected state to share its comments with and obtain the views of other affected states, using the other state's single point of contact, if there is one, or an appropriate state official if there is not a single point of contact. The Department encourages states to reconcile differences where they exist, so that states can present the Department with a unified position. If the affected states provide the Department with conflicting recommendations, the Department will, with respect to states that have established a process under the Order, accommodate recommendations to the extent possible and explain its nonaccommodations of other points of view as provided in § 100.7.

Section 100.9 How may a state simplify, consolidate or substitute Federally required state plans?

This section carries out section 2(d) of the Order, which directs Federal agencies to "allow" states to consolidate or simplify plans and to "encourage" states to substitute their own plans for Federally required state plans.

Paragraph (a) defines three terms used in this section. For a state to "simplify" a plan means that a state may develop its own format, choose its own submission date, and select the planning period covered by the plan. "Consolidate" means that the state may meet statutory and regulatory requirements by combining two or more plans into one document. The state may also select the format, submission date, and planning period for a consolidated plan. "Substitute" means that a state may use a plan or other document that is developed for its own purposes to meet Federal requirements in place of a plan mandated by the Department. State plans required by the Department that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order will be listed by the Department in a OMB notice published in today's Federal Register. The Department is willing to consider other state plans for eligibility for modification under this section.

For purposes of state plan modifications, it is necessary to draw a distinction between the state's decision concerning which plans it wants to try to modify and the Department's decision concerning whether to accept modified plans. Paragraph (b) deals with the first of these issues. A state may decide to try to simplify, consolidate or substitute state plans without prior approval by the Department. The state's discretion in this respect is complete.

Paragraph (c) points out that the Department will review the content of state proposals to simplify, consolidate, or substitute state plans to ensure that they meet all applicable Federal requirements. Under this provision, the Department could disapprove the content of a modified plan on the basis, for example, of legal insufficiency or the failure of the modified plan to meet Federally mandated substantive standards. If the Department disapproves a state plan, the state may have recourse to any existing appeal process of the Department applicable to the program in question. However, the Department does not propose any new special appeal process for situations in which the Department does not accept a modified plan.

This paragraph is not intended to give the Department any new authority it does not already have to review or disapprove state plans. For example, if a statute limits the grounds on which the Department may disapprove a state plan submission, this paragraph is not intended to expand those limits. The paragraph does emphasize, however, that these regulations do not impair the Department's existing authority to review and, if necessary, disapprove state plans. This section also does not affect any existing statutory or regulatory requirements concerning submission dates, planning periods, or formats of state plans. The Department will review and made appropriate modifications in regulatory requirements without a statutory basis to allow more state flexibility.

The Department's ability to review state plans is important not only for the Department's ability to administer its programs effectively but also to prevent states from inadvertently causing delays in Departmental funding decisions. In many financial assistance programs, required program standards must be met through a state plan before Federal funds are awarded. The Department may not be in a position to award funds to recipients in a plan does not meet legal requirements or substantive Federal program standards.

The Department encourages states which wish to simplify, consolidate or substitute state plans to inform the Department well in advance of their intentions. Early discussions between state officials and the Department regarding proposed modifications of plans will help to avoid later problems, including unexpected delays or disapprovals of modifications. The Department is very willing to work closely with state officials on plan modifications, and where feasible, will provide technical assistance or advice in plan modification efforts.

Section 100.10 May the Secretary waive any provision of these regulations?

This section allows the Secretary to waive any provision in these regulations in an emergency. The Department expects to use this provision sparingly, since the Department's policy is to carry out the Order as fully as it can.

List of Subjects in 45 CFR Part 100

Intergovernmental relations.

Issued at Washington, D.C., January 13, 1983.

Richard S. Schweiker,

Secretary of Health and Human Services.

Attachment A—Proposed List of HHS Programs Not Subject to Executive Order 12372 and These Regulations

Attachment B—HHS Programs Subject to Executive Order 12372 and These Regulations

Attachment A—HHS Programs Not Subject to Executive Order 12372 and These Regulations

There are several types of financial assistance activities which HHS has determined are not subject to the Executive Order and these regulations. These activities include:

1. Research that does not directly affect states or municipalities;
2. Academic training;
3. Direct payments to individuals;
4. Financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects;
5. Programs administered by Federally-recognized Indian tribes;
6. Direct financial assistance to non-governmental entities (e.g., a non-profit organization, business, corporation, association, private school or university, and a state or municipal college or university); and
7. Programs having unique characteristics that make it impractical to subject them to the provisions of these regulations.

The programs that follow are listed according to the above categories. Some programs are characterized by more than one category. In those cases, the program title is followed by the number of any other category that also applies.

All *Catalog of Federal Domestic Assistance* numbers are taken from the 1982 *Catalog*.

1. Research That Does Not Directly Affect States or Municipalities

13.103 FDA Research
None FDA Demonstration Grants
None FDA Education/Information Dissemination
13.110 Maternal and Child Health Federal Consolidated Programs (2,6)
13.111 Adolescent Family Life Research Grants
13.226 Health Services Research and Development—Grants (2,6)
13.242 Mental Health Research Grants
13.262 Occupational Safety and Health Research Grants (2,6)
13.271 Alcohol Research Scientist Development and Research Scientist Awards (6)
13.273 Alcohol Research Grants
13.277 Drug Abuse Research Scientists Development and Research Scientist Awards (6)
13.279 Drug Abuse Research
13.281 Mental Health Research Scientist Development and Research Scientist Awards (6)
13.306 Laboratory Animal Sciences and Primate Research (6)
13.333 Clinical Research (6)
13.337 Biomedical Research Support (6)
13.361 Nursing Research Project Grants
13.371 Biotechnology Research (6)
13.375 Minority Biomedical Research Support (6)
13.393 Cancer Cause and Prevention Research (6)
13.394 Cancer Detection and Diagnostic Research (6)
13.395 Cancer Treatment Research (6)
13.396 Cancer Biology Research (6)
13.397 Cancer Centers Support (6)
13.398 Cancer Research Manpower (6)
13.399 Cancer Control (6)
13.608 Child Welfare Research and Demonstration
13.647 Social Services Research and Demonstration
13.652 Adoption Opportunities (6)
13.766 HCFA Research
13.812 SSA Research
13.821 Physiology and Biomedical Research (6)
13.823 Primary Care Research and Demonstration Grants
13.837 Heart and Vascular Diseases Research (6)
13.838 Lung Diseases Research (6)
13.839 Blood Diseases and Resources Research (6)
13.840 Caries Research (6)
13.841 Periodontal Disease Research (6)
13.842 Craniofacial Anomalies Research (6)
13.843 Restorative Materials Research (6)
13.844 Pain Control and Behavioral Studies (6)
13.845 Dental Research Institutes (6)
13.846 Arthritis, Musculoskeletal and Skin Diseases Research (6)
13.847 Diabetes, Endocrinology and Metabolism Research (6)
13.848 Digestive Diseases and Nutrition Research (6)
13.849 Kidney Disease, Urology and Hematology Research (6)
13.853 Clinical Research (6)
13.854 Biological Basis Research (6)
13.855 Immunology, Allergic and Immunologic Diseases Research (6)
13.856 Microbiology and Infectious Diseases Research (6)
13.859 Pharmocological Sciences (6)
13.862 Genetics Research (6)
13.863 Cellular and Molecular Basis of Disease Research (6)
13.864 Population Research (6)
13.865 Research for Mothers and Children (6)
13.866 Aging Research (6)
13.867 Retinal and Choroidal Diseases Research (6)
13.868 Corneal Diseases Research (6)
13.869 Cataract Research (6)
13.870 Glaucoma research (6)
13.871 Strabismus, Amblyophobia and Visual Processing (6)
13.878 Soft Tissue Stomatology and Nutrition Research (6)
13.879 Medical Library Assistance (6)
13.880 Minority Access to Research Careers (6)
13.891 Alcohol Research Center Grants
13.892 Prediction, Detection and Assessment of Environmentally Caused Diseases and Disorders (6)
13.893 Mechanisms of Environmental Diseases and Disorders (6)
13.894 Environmental Health Research and Manpower Development Resources (2,6)
13.974 Family Planning Services Delivery Improvement Research Grants
13.989 Senior International Awards Program (2)
None Policy Research (administered by the Assistant Secretary for Planning and Evaluation (6)

2. Academic Training

13.244 Mental Health Clinical Service-Related Training Grants
13.263 Occupational Safety and Health Training Grants (6)
13.272 Alcohol National Research Awards for Research Training
13.274 Alcohol Clinical Service-Related Training Grants
13.278 Drug Abuse Research Service Awards for Research Training
13.280 Drug Abuse Clinical or Service-Related Training Grants
13.282 Mental Health National Research Service Awards for Research Training
13.298 Nurse Practioner Training Program and Nurse Practitioner Traineeships
13.299 Advanced Nurse Training Program
13.339 Health Professions Capitation Grants (4,6)
13.342 Health Professions Student Loans
13.358 Professional Nurse Traineeships
13.359 Nurse Training Improvement
13.363 Nursing Scholarships (4)
13.364 Nursing Student Loans
13.379 Grants for Graduate Training in Family Medicine
13.381 Health Professions—Financial Distress Grants (6)
13.384 Health Professions Start-Up Assistance (6)
13.632 Developmental Disabilities—University Affiliated Facilities (6)
13.648 Child Welfare Services Training Grants
13.668 Special Programs for the Aging—Title IV—Training, Research and Discretionary Projects and Programs (1,6)
13.820 Scholarships for First-Year Students of Exceptional Financial Need
13.822 Health Careers Opportunity Program
13.824 Area Health Education Centers (AHEC)
13.884 Grants for Residency Training in General Internal Medicine and/or General Pediatrics
13.886 Grants for Physician Training
13.895 Grants for Faculty Development in Family Medicine
13.896 Grants for Predoctoral Training in Family Medicine
13.897 Residency Training in the General Practice of Dentistry
13.962 Health Administration Graduate Traineeships
13.963 Graduate Programs in Health Administration
13.964 Traineeships for Students in Schools of Public Health and Other Graduate Public Health Programs
13.969 Curriculum Development Grants
13.984 Grants for the Establishment of Departments of Family Medicine

3. Payments to Individuals

13.108 Health Education Assistance Loans (HEAL) (2)
13.288 National Health Service Corps Scholarship Program
13.297 National Research Service Awards (Nursing) (2)
13.773 Medicare—Hospital Insurance
13.774 Medicare—Supplementary Medical Insurance
13.802 Social Security Disability Insurance

13.803 Social Security Retirement Insurance
13.804 Social Security Benefits to Persons Aged 72 and over
13.805 Social Security Survivors Insurance
13.806 Special Benefits for Disabled Coal Miners
13.807 Supplemental Security Income
13.971 Health Professions Preparatory Scholarship Programs for Indians
13.972 Health Professions Scholarship Program for Indians
13.973 Special Loans for Former National Health Services Corps Members to Enter Private Practice

4. Financial Transfers for Which HHS Has No Funding Discretion or Direct Authority To Approve Specific Sites or Projects

13.658 Foster Care-Title IV-E
13.665 Community Services Block Grant
13.667 Social Services Block Grant
13.679 Child Support Enforcement
13.714 Medicaid
13.775 State Medicaid Fraud Control Units
13.777 State Health Care Providers Survey Certification
13.808 AFDC
13.810 AFDC—State and Local Training
13.814 Refugee Assistance—State Administered Programs
13.817 Entrant Assistance—Cuban and Haitian Entrants
13.818 Low-Income Home Energy Assistance
13.991 Preventive Health and Health Services Block Grant
13.992 Alcohol, Drug Abuse and Mental Health Block Grant
13.993 Primary Care Block Grant
13.994 Maternal and Child Health Block Grant

5. Programs Administered by Federally-Recognized Indian Tribes

13.228 Indian Health Services—Health Management Development Program
13.612 Native American Program Financial Assistance Grants (1,6)
13.655 Special Programs for the Aging—Title VI—Grants to Indian Tribes
13.661 Native American Programs—Research, Demonstration and Evaluation (1,6)
13.662 Native American Programs—Training and Technical Assistance (6)
13.970 Health Professions Recruitment Program for Indians (1,6)

6. Direct Financial Assistance to Non-Governmental Entities

13.776 Professional Standards Review Organizations
13.815 Refuge Assistance—Voluntary Agency Programs
None Entrant Resettlement Grants to National Voluntary Agencies

7. Programs Having Unique Characteristics

13.256 Health Maintenance Organizations
HMOs are businesses that must provide documentation in a qualification/loan application that is proprietary in nature. To require public review of these applications when a Federal loan or guarantee is involved could seriously jeopardize the confidentiality of these data and the HMO's competitive position in the marketplace.
HMOs have to be licensed by the State to operate. This is usually handled by the State Insurance and/or Health Commissioner's office. Requiring other State or local review would be a duplication of effort.
Loans and loan guarantees to HMOs are for operating deficits and are required to be paid back. They are not subsidy loans. The Federal government has a lien on net revenues and has all powers of a creditor to recover assets on behalf of the U.S. Government.
13.982 Mental Health Disaster Assistance
This program provides grants to support the provisions of mental health services to individuals in a disaster area. Funds may not be used for long-term treatment. The National Institute of Mental Health acts as the agent for the Federal Emergency Management Administration. The Governor of the applicant State must approve the applicant agency. State approval or review of the specific applications would impede quick action for services in a disaster situation.

Attachment B—Programs Subject to Executive Order 12372

13.217 Family Planning Projects
13.224 Community Health Centers
13.246 Migrant Health Centers Grants
13.258 National Health Service Corps
13.260 Family Planning Services
13.268 Immunization
13.293 State Health Planning and Development Agencies
13.294 Health Systems Agencies
13.392 Cancer Construction
13.600 Head Start
13.623 Runaway Youth
13.628 Child Abuse
13.630* Developmental Disabilities—Basic Support and Advocacy Grants
13.631 Developmental Disabilities—Special Projects
13.633* Aging—Title III A & B—Grants for Supportive Services and Senior Centers
13.635* Aging, Title III C—Nutrition
13.645* Child Welfare Services—State Grants
13.646* WIN
13.659* Adoption Assistance
13.676 Surplus Property Utilization
13.965 Black Lung Clinics
13.977 Venereal Disease
13.978 Venereal Disease Research, Demonstration and Public Information and Education Grants
13.985 Eye Research—Construction
13.987 Health Programs for Refugees
13.988 Cooperative Agreements for State-Based Diabetes Control Programs
13.990 National Health Promotion Training Network
13.995 Adolescent Family Life Demonstration Program
None Cuban-Haitian Special Placement
None Refugee Assistance Targeted Assistance Grants to States
None Entrant Assistance Targeted Assistance Grants to States

* Closed-ended formula grant programs to the States.

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

Title 45—[Amended]

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

Sec.
100.1 What is the purpose of these regulations?
100.2 What definitions apply to these regulations?
100.3 What programs and activities of the Department are subject to these regulations?
100.4 [Reserved]
100.5 What procedures apply to a state's choice of programs under the Order?
100.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?
100.7 How does the Secretary make efforts to accommodate state and local concerns?
100.8 What are the Secretary's obligations in interstate situations?
100.9 How may a state simplify, consolidate, or substitute Federally required state plans?
100.10 May the Secretary waive any provision of these regulations?

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); section 401(b) of Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)).

§ 100.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, issued July 14, 1982, and titled "Intergovernmental Review of Federal Programs."

(b) Executive Order 12372 is intended 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.

(c) The Order and these regulations are intended only to improve the internal management of the Department. Neither the Order nor these regulations are intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 100.2 What definitions apply to these regulations?

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

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

"Secretary" means the Secretary of the U.S. Department of Health and Human Services, or an official or employee of the Department acting for the Secretary under a delegation of authority.

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

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

(a) The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to the Order and these regulations.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 100.5, the Secretary to the extent permitted by law, uses the official state process to determine official views of state and local elected officials.

§ 100.4 [Reserved]

§ 100.5 What procedures apply to a state's choice of programs under the Order?

(a) Each state that adopts a process under the Order notifies the Secretary of the Department's programs that the state chooses to cover under the Order.

(b) The Secretary uses a state's process under the Order as soon as feasible, depending on individual programs and projects, after the state notifies the Secretary of its program choices.

(c) States may change their program choices under the Order at any time. The Secretary may establish deadlines by which states are required to inform the Secretary of changes in their program choices.

§ 100.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) This section applies to all comments received from a state pursuant to an official process it has established under the Order, including comments where the state has delegated to local elected officials the review, coordination and communication with the Department.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 100.5, the Secretary, to the extent permitted by law, communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Except unusual circumstances, the Secretary gives states at least 30 days to comment on any proposed Federal financial assistance or direct Federal development (see § 100.8 for comment periods pertaining to interstate situations).

(d) Subject to paragraph (c) of this section, the Secretary may establish deadlines for:

(1) Applicants to submit copies of their applications to states;

(2) States to complete their review of applications under a financial assistance program and to submit their comments to the Department; and

(3) States to complete their review of proposed direct Federal development and to submit their comments to the Department.

(e) The Secretary responds as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and all Federal agencies.

§ 100.7 How does the Secretary make efforts to accommodate state and local concerns?

(a) If a state provides comments to the Department in accordance with § 100.6(e), the Secretary:

(1) Accepts the state's comments; or

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

(3) (i) Provides the state with a timely explanation of the basis for the Department's decision.

(ii) If requested by the Governor, the Secretary provides the explanation in writing.

(iii) If the state has designated a state office or official as a single point of contact between the state and all Federal agencies, the Secretary provides any explanation under paragraph (a)(3) of this section to that official.

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

(1) The Department will not implement its decision for ten days after the state receives the explanation; or

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

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

The Secretary is responsible for—

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

(b) Notifying the affected states, including states that have not adopted a process under the Order; and

(c) Except in unusual circumstances, providing the affected states an opportunity of at least 45 days to comment.

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

(a) As used in this section:

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

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

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

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

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

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

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

2. Subchapter D and Subchapter K, Chapter 1, Title 42 of the Code of Federal Regulations is amended as follows:

Title 42—[Amended]

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

42 CFR Part 51c is amended as follows:

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

§ 51c.104 Application.

* * * * *

(b) * * *

(10) Evidence that all applicable requirements for review and/or

approval of the application under Title XV of the Act have been met.

* * * * *

PART 52b—NATIONAL CANCER INSTITUTE CONSTRUCTION GRANTS

42 CFR Part 52b is amended as follows:

§ 52b.4 [Amended]

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

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

42 CFR Part 52a is amended as follows:

§ 55a.4 [Amended]

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

PART 56—GRANTS FOR MIGRANT HEALTH SERVICES

42 CFR Part 56 is amended as follows:

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

§ 56.104 Application.

* * * * *

(b) * * *

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

* * * * *

PART 122—HEALTH SYSTEMS AGENCIES

42 CFR Part 122 is amended as follows:

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

§ 122.1 Definitions.

* * * * *

(b) [Reserved]

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

§ 122.105 Selection of agencies.

(a) * * *

(1) * * *

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

* * * * *

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

§ 122.107 Full designation agreements.

* * * * *

(c) * * *

(11) * * *

(iii) [Reserved]

(iv) [Reserved]

* * * * *

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

§ 122.408 Procedures for submission of application.

* * * * *

(b) * * *

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

* * * * *

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

§ 122.410 Procedures for health systems agency review.

(a) * * *

(1) * * *

(v) [Reserved]

* * * * *

Title 45—[Amended]

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

45 CFR Part 224 is amended as follows:

1. In § 224.11 paragraphs (b) and (d)(2) and (3) are reserved as follows:

§ 224.11 Annual State WIN plans.

* * * * *

(b) [Reserved]

(d)(1) * * *

(2) [Reserved]

(3) [Reserved]

* * * * *

PART 1351—RUNAWAY YOUTH PROGRAM

45 CFR Part 1351 is amended as follows:

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

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

* * * * *

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

[FR Doc. 83-1873 Filed 1-21-83; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

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

[Docket No. R-83-1070]

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

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement Executive Order 12372, "Intergovernmental Review of Federal Programs." It applies to Federal financial assistance and direct Federal development programs and activities of the Department of Housing and Urban Development. Executive Order 12372, and these proposed regulations, are intended to replace the intergovernmental consultation system developed under Office of Mangement and Budget (OMB) Circular A-95. Under the Order, State and local elected officials, not the Federal government, will determine what Federal programs and activities to review and the procedures by which the review will take place.

DATES: *Comment Closing Date:* Comments must be received on or before April 11, 1983.

ADDRESS: Interested persons should submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, Room 10140, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 755-6480. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

For many years, consultation between State and local officials and Federal agencies concerning Federal programs and activities has taken place through an elaborate regulatory and organizational framework created under OMB Circular A-95. The system also resulted in review of Federal programs by State and local agencies without regard to the priorities of their elected leadership. The A-95 process became highly bureaucratic, burdensome, and costly. States and localities had too much paperwork, and, as a result, the impact of substantive comments was sometimes lost. A network of State and area clearinghouses was created to manage this paperwork. State and local elected officials found it difficult to exert significant influence on Federal decisions through this system, and federal agencies found the system a cumbersome method of obtaining information about, and responding appropriately to, State and local concerns.

On July 14, 1982, President Reagan signed Executive Order 12372 Intergovernmental Review of Federal Programs. The Executive Order is reproduced as Attachment A to the OMB notice published in today's **Federal Register.** The Order directs the revocation of Circular A-95, and provides for a new, more effective, intergovernmental consultation system that is consistent with the the President's policies concerning Federalism and regulatory relief. Under the Order, State and local elected officials will take the initiative for establishing review procedures and priorities. State and local elected officials, not the Federal Government, will determine within the scope of the Order, which Federal programs and activities to review and the procedures by which the review will take place. When State and local elected officials bring their concerns to a Federal agency's attention through this process, the agency will have to make efforts to accommodate the concerns, and if it does not accommodate them, explain why not. This "accommodate or explain" provision gives greater weight to State and local views than Circular A-95 did. In addition, States will have the opportunity to simplify, consolidate, or substitute Federally required State plans.

Across the whole range of Federal programs and activities, the Circular A-95 created a substantial administrative burden. The Executive Order's system of consultation will significantly reduce that burden, and will open opportunities for States to reduce administrative burdens in Federal programs requiring State plans. In contrast to the A-95 system, which relied heavily on clearinghouses, planning organizations, and other bodies which are not elected by the jurisdictions they serve, the Order, consistent with the President's Federalism policy, emphasizes the role of elected State and local officials.

OMB Guidance to States

In order to assist States as they begin their work in implementing the Order, OMB wrote on or before today to each State concerning the establishment of an official State process. This letter will be reproduced in the Federal Register in the next few days. This letter explains the role of the "single point of contact." A "single point of contact" is the one office or official in the State that transmits the result of the State review and coordination with recommendations that differ from the Federal proposal to the Department and other Federal agencies and to which the Department directs official communications (e.g., explanations of nonaccommodation) to the State under the Order. A State may have as few or as many official entities as it chooses to perform review and coordination and to conduct discussions with the Department. However, there should only be one point of contact to officially transmit recommendations for change to Federal agencies under the Order. It is up to the State whether the single point of contact plays a substantive role with respect to the State's views, or simply acts as a focal point for official communications.

It is also worth emphasizing that States are not required to adopt an official State process at all. However, after final rules implementing the Order become effective (they will be published on or about April 30, 1983), the existing A-95 consultation system will no longer be in effect. Other existing statutory requirements are not affected by the proposed rule. An inventory of these existing requirements will be available.

This Department and other Federal agencies have the basic responsibility of ensuring that their programs and activities are carried out in conformity with the Order's provisions. OMB will have general government-wide oversight responsibility for the implementation of the Order, but will not attempt to exercise any day-to-day, operational control of agency actions. Nor will OMB act as a forum for "appeals" of agency actions by non-government parties.

Development of Proposed Regulations

If the objectives of the Executive Order are to be met, this Department and other Federal agencies must ensure that they deal with state and local elected officials in a consistent and understandable way. To this end, this Department and other Federal agencies affected by the Order have worked with OMB to make common policy decisions

and, to the extent feasible, to draft common regulatory language. The agencies involved chose an approach that minimizes the imposition of regulatory requirements on non-Federal parties. For the most part, these proposed regulations will spell out the Department's obligations and procedures in response to the views expressed by State and local elected officials. A paper discussing the policy decisions made by the agencies and OMB was made available to the public in December (47 FR 57369, December 23, 1982). Following the close of the comment period, the agencies will again work together with the aim of promulgating final rules that are substantially consistent with one another. It is the Federal Government's intention that there will be no further rulemaking with respect to this Executive Order.

The Executive Order mandates the implementation of final regulations by April 30, 1983. It will not be possible to have an adequate comment period and meet this deadline if the normal 30-day delay between the publication date of a final rule and its effective date is observed. Consequently, the Department proposes to make the final rule effective immediately upon its publication on April 30.

As a matter of style, the proposed rule uses the present tense when describing the Department's obligations. For example, when § 52.7 proposed regulation says that the Secretary "provides the State with a timely explanation," the regulation means that the Secretary is obligated to do so.

Removal of Regulations Implementing OMB Circular A-95

In connection with this proposed rulemaking, the Department is proposing to remove its existing regulations implementing former OMB Circular A-95. The current Part 52 is the basic HUD regulation implementing OMB Circular A-95. Amendatory paragraphs 2 through 25 would remove references to OMB Circular A-95 contained in other HUD regulations. Executive Order 12372 directed OMB to revoke the Circular itself, and the OMB directive revoking the Circular told Federal agencies to leave their A-95 regulations in place only until new regulations implementing the Order were promulgated on April 30, 1983.

Section-by-Section Analysis

Section 52.1 What is the purpose of these regulations?

This section briefly states the purpose of the regulations, which is to implement Executive Order 12372 and foster an improved system of intergovernmental consultation. Paragraph (c) states the important point that the Order, and these regulations, are intended only to improve the Department's internal management of its consultation with State and local governments. Neither the Order nor these regulations are intended to create any right of judicial review of the Department's action. For example, it is not intended that a State or local government would have the right to sue the Department because the Department failed to explain a nonaccommodation of a State recommendation.

Section 52.2 What definitions apply to these regulations?

This section defines several terms used frequently in the proposed rule. "Department" means the Department of Housing and Urban Development. "Order" means Executive Order 12372. "Secretary" means the Secretary of Housing and Urban Development or an official or employee of the Department acting under a delegation of authority from the Secretary. This does not mean that there must be a new, specific, formal delegation pertaining to Executive Order 12372. An official who has existing authority to act concerning a program or activity under a delegation could act under the Order concerning that program or activity. "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the trust territory of the Pacific Islands. The definition of "State" means that the District of Columbia, Puerto Rico, and the other jurisdictions mentioned may create an official consultation process and consult with Federal agencies on the same basis as the 50 States.

Several other terms appearing in the Order are not defined in this section, but are used in the regulation in a way that makes their operational meaning clear (e.g., accommodate and explain in § 52.7).

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

The intent of the Order is that State and local elected officials should have the opportunity to consult with Federal agencies under the Order concerning as many Federal programs and activities as they wish. This section provides that the Department will publish a Federal Register notice, in conjunction with the publication of its final Executive Order 12372 rule, listing the programs and activities that are subject to the Order. Updated lists will be published when necessary in order to let States know which of the Department's programs and activities they may choose to cover.

The attachment to this preamble contains a list of those programs and activities that the Department proposes to exclude from coverage, and of those programs and activities that the Department intends to include, under the Order. The reason for each proposed exclusion is also listed. The Department seeks comments on the proposed exclusions. After promulgation of the final rule, if the Department wants to exclude new or additional program or activities from coverage under the Order, it will publish a Federal Register notice requesting comment on the proposed exclusions.

At this time, States should assume that all the Department's remaining Federal financial assistance programs will be subject to the Order. Of course, activities and programs that clearly are neither Federal financial assistance nor direct Federal development (e.g., procurement by the Department) are not subject to the Order. Also, the Order and these regulations do not apply to proposed regulations, legislation, budget formulation, or classified programs or activities where formal consultation would endanger national security.

Even if a program or activity is excluded from the consultation system established by the Order, State and local officials would still have an opportunity to have their views considered by the Department. Indeed, statutory requirements for consultation, such as section 401(b) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)), require Federal agencies to consider the views of State and local goverments. Many of the Department's program statutes have their own consultation requirements, and the Department will, of course, comply with all existing or future statutory requirements of this kind. However, the Department is not obligated to follow the provisions of the Order and these regulations with respect to excluded programs and activities.

If at any time a State believes that any official of the Department has not made appropriate use of the official State process, the State is invited to raise its concerns directly with the Secretary.

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

This section incorporates the most important portions of Executive Order

12372 into the Department's regulation, emphasizing the Department's obligations under the Order. The mechanisms by which the Department will carry out many of these general obligations are developed further in other sections of the rule.

Paragraph (b)(2) means the Department is obligated to make efforts to ensure that information on proposed actions or decisions of the Department is available to the States in sufficient time to be able to exert meaningful influence on the Department's course of action. For example, the Department would make sure that the State learned of assistance announcements including decision criteria in time to make a meaningful response.

Section 52.5 How does a State choose programs to cover under the Order?

States may choose to consult with the Department through the Order concerning any of the Department's programs and activities that the Department's Federal Register notice on or about April 30, 1983 and subsequently lists as subject to the Order. However, these regulations do not require States to consult with the Department concerning any particular program or activity. This is an important distinction between the Order's consultation policy and the system established under Circular A-95, which gave States no discretion concerning program selection. Under the Order, each State may choose whether to use the consultation system with respect to any particular program or activity. This gives States increased flexibility to determine how best to allocate their resources. For example, many programs have existing statutory consultation systems. If a State decides that an existing consultation system is adequate, the State might choose not to cover the program under its E.O. 12372 process, thereby avoiding duplication and saving resources for use on other programs. A State also might want to decline to cover a program which has only minor effects on the State and its people.

The Department emphasizes that the choice of whether to cover a particular program or activity listed in the Department's Federal Register notice is entirely up to each State. While the Department will be happy to discuss with States the most effective ways of carrying our consultation concerning its programs and activities, the Department will not attempt to constrain the State's discretion with respect to program selection.

Paragraph (a) of this section sets out a purely administrative requirement pertaining to program selection. The State must notify the Secretary of the programs and activities it chooses to cover. When it first establishes its official process, the State can meet this requirement by sending to OMB, along with other information required to establish the process, a list of the Federal programs and activities it wishes to cover. OMB will inform the various Federal agencies of the programs and activities of each that the State has chosen to cover. Subsequently, the State should send all program coverage information (additions, deletions, other changes) directly to the Department. This information will enable the Department's personnel who work on a particular program or activity to know which States they must consult with under the provisions of the Order.

Paragraph (b) provides that, once a State has established a process and made its program selections known to the Department, the Department will use the State's process concerning the programs and activities selected by the State as soon as feasible. While the Department will make every effort to use the State's process, there may be situations, on individual programs or projects, where the Department may not be able to do so for a time. The Department will make determinations concerning when to begin using the State's official process on a case-by-case basis and will let the States know when it will start to use a State's official process.

Paragraph (c) provides that a State shall give the Department 45 days notice before the effective date of any changes in the programs the State chooses to cover under the Order. A State may add or delete a program or activity from those it wishes to cover under the Order at any time. However, in order for meaningful consultation to occur under the Order, the Department needs this "lead time" to adapt its procedures to the changed circumstances.

Section 52.6 How does the Secretary give States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

Paragraph (a) points out that the Order would apply not only to comments prepared by the official State process itself, but also to comments formulated by local elected officials to whom the State's consultation role has been delegated in specific instances. Section 3(a) of the Order permits States to delegate, to local elected officials in specific instances, the review, coordination, and communication with Federal agencies that normally take place under the State process. This means that States may choose not only which programs and activities to cover but also who within the State has the opportunity to carry out the consultation. States have complete discretion concerning delegation of their consultation role.

For example, a State could delegate to a single mayor the State's consultation role with respect to a project occurring in his or her city. The State could delegate all consultation under a particular program to officials of the local governments whose jurisdictions are afected by projects under the program. The State could delegate its consultation role for a particular program to local elected officials in cities above 250,000 population but not to local officials in smaller jurisdictions, or vice versa. In any case of delegation, the local official to whom the State's consultation role is delegated functions as the official State process with respect to the program or activity. For example, the Department's efforts to accommodate the concerns expressed by the local official will be pursued directly with the official, not with the State itself.

The local official to whom the State's consultation role had been delegated would not send his or her comment directly to the Department. Rather, the official would send the comment to the Department through the State single point of contact. The Department would work with the local official in attempting to reach an accommodation, but, if efforts at accommodation were unsuccessful, the Department would explain the nonaccommodation to the single point of contact. Routing the delegated comment through the State single point of contact would alert the Department to the fact that the local official's comments should be dealt with under the provisions of the Order and would make unnecessary a separate communication from the State to the Department informing the Department that the comment was an official comment of the State.

Paragraph (b) states that, as a general rule, States choosing to cover a particular program or activity will have 30 days to comment on a proposed action or decision (45 days in the case of interstate situations) before the Department commits itself to a given course of action. The Department, on a case-by-case basis, may allow a shorter period for comment if unusual circumstances make the shorter period necessary. Among the kinds of circumstances that might necessitate a shorter comment period are an emergency, the necessity to make a

grant decision before the end of a fiscal year, or a statutory deadline.

In order to meet the Order's objective of ensuring States a meaningful opportunity to influence decisions by the Department, the Department has provided in paragraph (c) that it may establish requirements for applicants to submit copies of their applications to the State. The requirements may be set forth in nonregulatory program specific announcements.

Paragraph (d) makes an important point with respect to the way that communications between States and the Department would work. Under the Order, a State may organize the mechanics of its consultation process any way it chooses. However, in order to ensure that communications between the Department and the official State process flow efficiently, the Department strongly encourages States to establish a "single point of contact" for State communications with Federal agencies. Channeling communications from the States to Federal agencies and from agencies back to the States through a single point has obvious benefits from the point of view of administrative simplicity. In addition, it will enable the Department to know which communications to treat as official under the provisions of the Order. The Department needs a means of separating the letters from State and local elected officials to which it will respond through normal correspondence channels from those letters to which it must respond under the provisions of the Order. States' use of a single point of contact will permit the Department to make this necessary administrative distinction.

In the absence of a State process, or with respect to a program that a State has not selected for coverage, the Department will work with the State, consistent with existing legal requirements. The provisions of the Order and these regulations will not apply, however.

The proposed regulation would not impose any constraints on the content of comments that States send to the Department. However, the Department would strongly encourage commenters under the Order to follow three policies which are important for the efficient operation of the Order's consultation system.

First, comments should address statutes, regulations, and other requirements governing a specific program or decision. Often, the Department is required to make a decision based on certain statutorily established factors. In other cases, the Department, through regulation or guidance, has established decisionmaking criteria for various actions. It is unlikely that the Department would be able to accommodate concerns that do not address these requirements and standards, or which are not relevant to the decisionmaking process. In order to have meaningful influence on the Department's decisions, comments must be relevant to the factors on which the Department bases its decisions. For example, if a Department's standards call for a decision to be made at a certain stage only on the technical merits of financial assistance proposals, before consideration is given to costs, the Department could not accommodate a State comment addressing costs during the technical review.

Second, States can assist the Department's implementation of the Order by clearly specifying the magnitude of the State's concerns. Often, it may be difficult for the Department to tell whether a State is firmly recommending a given course of action, has a mild preference for, or reservation about, the action, or is simply seeking clarification of the Department's position. For example, if a State wants the Department to recognize the State's priorities, or deny a financial assistance application, it would be very helpful if the State identified its position as clearly as possible. The Order directs Federal agencies to make efforts to accommodate State concerns. The Department's ability to do so successfully is dependent, to a significant degree, on the clear articulation of concerns by the States.

Third, the Department may not be in a good positions to accommodate State and local concerns unless the State speaks with one voice in its comments. The Department recognizes that different State and local officials and agencies may not always agree among themselves concerning the course of action the Department should follow. To avoid the Department's having to seek clarification concerning which sets of views the State wants the Department to accommodate. The process will work much better if the Department receives a single set of comments.

Section 52.7 How does the Secretary make efforts to accommodate State and local concerns?

Paragraph (a) provides that when a State comments to the Department under the Order, the Department has three choices. The Department can accept the State's comments (i.e., do as the State recommends). Second, it can reach a mutually agreeable solution with the State. This solution can differ from the original State position on the matter.

Third, if the Department cannot accept the State's comments or reach a mutually agreeable solution, the Department is obligated to give the State a timely, simple explanation of the Department's reasons for not doing so. While the Department is not required to accept the State's comments or to begin discussions toward another solution, the Department does have an obligation to provide a simple explanation of its decision.

Normally, the nonaccommodation explanation could take any form which adequately communicates the Department's reasons for its decision to the State. A telephone call, a meeting, or a letter would perform this function. The Department had the discretion to choose the most appropriate mode of communicating the nonaccommodation explanation in each case. The nonaccommodation explanation is made by a designee of the Secretary.

There is one exception to the Department's discretion to choose the mode of communicating the nonaccommodation explanation. As paragraph (a)(3)(ii) provided, the Governor of the State may request, either in advance of the time the nonaccommodation explanation is made or after it is communicated to the single point of contact, that a nonaccommodation explanation be made in writing. When it receives such a request from a Governor, the Department's nonaccommodation explanation will be made in a letter.

Paragraph (a)(3)(iii) explains the role of the single point of contact in receiving nonaccommodation explanations from the Department. The Department will direct all nonaccommodation explanations to the single point of contact in each State that has a single point of contact. This is true even when accommodation discussions have occurred between the Department and another party in the State.

Paragraph (b) concerns safeguards to ensure that the interests of States are protected in nonaccommodation situations. Paragraph (b)(1) provides that a nonaccommodation explanation will state that the Department will not implement its decision until ten days after the single point of contact receives the explanation, except as provided in paragraph (b)(2). This waiting period is intended to permit States to respond to the Department in cases of nonaccommodation before the Department has irrevocably carried out the decision. In a case in which the Department has provided a verbal explanation of a decison to the single point of contact, and the Governor

subsequently has requested a written nonaccommodation explanation, the ten-day period will start to run from the date of the original explanation to the single point of contact.

Paragraph (b)(2) recognizes that there will be some situations in which the Department cannot observe the ten-day waiting period. These unusual circumstances could include, for example, a statutory deadline, emergency, or end of a fiscal year situation that may make it infeasible for the Department to wait ten days before implementing its decision. If the Department cannot observe the waiting period, the Secretary or a designee of the Secretary at a higher level than the official responsible for making the original decision will review the decision before the nonaccommodation explanation is made and before the Department implements the decision. The nonaccommodation explanation will include the Department's reasons for determining that the ten-day waiting period is not feasible.

Section 52.8 What are the Secretary's obligations in interstate situations?

In some cases, action taken by the Department in Federal financial assistance programs may have an impact on interstate areas. In these situations, the Department has certain additional obligations. First, the Department must identify its Federal financial assistance actions or decisions that have an impact on interstate areas. Having done so, the Department must, as provided in paragraph (b), notify the potentially affected States, whether or not they have established an official State process under the Order. Except in unusual circumstances (e.g., emergencies, financial assistance awards at the end of the fiscal year), the Department must provide the affected States an opportunity for comment of at least 45 days before the Department commits itself to a course of action. The increase in the minimum comment period from 30 to 45 days in interstate situations allows extra time for States to coordinate among themselves before providing views to the Department.

The Department, obviously, cannot require States to coordinate with each other or proposed Federal assistance having an impact on an interstate area. However, the Department strongly encourages each effected State to share its comments with, and obtain the views of, other affected States, using the other State's single point of contact, if there is one, or an appropriate State official if their is not a single point of contact. The Department encourages States to reconcile differences when they exit, so that the States can present the Department with a unified position. If the affected States provide the Department with conflicting recommendations, the Department will, with respect to States that have established a process under the Order, accommodate recommendations to the extent possible and explain its nonaccommodations of other points of view as provided in § 52.7.

Section 52.9 How may a State simplify, consolidate, or substitute State plans?

The Department has reserved this section because it currently has no programs that require the submission of State plans.

Section 52.10 May the Secretary waive any provisions of these regulations?

The section allows the Secretary to waive any provision in these regulations for good cause such as an emergency. The Department expects to use this provision sparingly.

National Environmental Policy Act

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

Executive Order 12291

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

Semiannual Agenda

This rule was listed at 47 FR 48435 as Item H-124-82 in the Department's Semiannual Agenda of Regulations published on October 28, 1982, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b) (Regulatory Flexibility Act), the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities, since the greater flexibility afforded to States and localities to develop their own review procedures and the greater responsiveness to the concerns of State and local officials, under the Order should enure alike to the benefit of both large and small governmental jurisdictions.

Paperwork Reduction Act

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

Catalog of Federal Domestic Assistance Program Numbers

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

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 52

Intergovernmental relations.

24 CFR Part 570

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

24 CFR Part 590

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

24 CFR Part 720

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

24 CFR Part 841

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

24 CFR Part 870

Public housing.

24 CFR Part 880

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

24 CFR Part 881

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

24 CFR Part 883

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

24 CFR Part 885

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

24 CFR Part 891

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

Accordingly, the Department proposes to amend Title 24 of the Code of Federal Regulations as follows:

1. By revising Part 52 to read as follows:

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

Sec.
52.1 What is the purpose of these regulations?
52.2 What definitions apply to these regulations?
52.3 What programs and activities of the Department are subject to these regulations?
52.4 What are the Secretary's general responsibilities under the Order?
52.5 What procedures apply to a State's choice of programs under the Order?
52.6 How does the Secretary give States an opportunity to comment on proposed Federal financial assistance and direct Federal development?
52.7 How does the Secretary make efforts to accommodate State and local concerns?
52.8 What are the Secretary's obligations in interstate situations?
52.9 [Reserved]
52.10 May the Secretary waive any provision of these regulations?

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 52.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, issued July 14, 1982, and titled "Intergovernmental Review of Federal Programs."

(b) Executive Order 12372 is intended 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.

(c) The Order and these regulations are intended only to improve the internal management of the Department. Neither the Order nor these regulations are intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 52.2 What definitions apply to these regulations?

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

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

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

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

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

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to the Order and these regulations.

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

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

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

(1) Uses the State process to determine official views of State and local elected officals;

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

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

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

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

§ 52.5 What procedures apply to a State's choice of programs under the Order?

(a) Each State that adopts a process under the Order notifies the Secretary of those Departmental programs identified through the provisions of § 52.3 that the State chooses to cover under the Order.

(b) The Secretary uses a State's process under the Order as soon as feasible, depending on individual programs and projects, after the State notifies the Secretary of its program choices.

(c) A State gives the Secretary 45 days notice of any changes in the programs the State chooses to cover under the Order.

§ 52.6 How does the Secretary give States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) This section applies to all comments received from a State pursuant to an official process it has established under the Order, including comments where the State has delegated to local elected officials the review, coordination and communication with the Department.

(b) Except in unusual circumstances, the Secretary gives States 30 days to comment on any proposed Federal financial assistance (see § 52.8 for comment periods pertaining to interstate situations).

(c) Subject to paragraph (b) of this section, the Secretary may establish

requirements for applicants to submit copies of their application to the States.

(d) The Secretary responds as provided in the Order to all comments from a State that are provided through a State office or official that acts as a single point of contact under the Order between the State and all Federal agencies.

§ 52.7 How does the Secretary make efforts to accommodate State and local concerns?

(a) If a State provides comments to the Department in accordance with § 52.6(d), the Secretary—

(1) Accepts the State's comments;

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

(3)(i) Provides the State with a timely explanation of the basis for the Department's decision.

(ii) If requested by the Governor, the Secretary provides the explanation in writing.

(iii) The Secretary provides any explanation under this paragraph to the office or official that acts as a single point of contact.

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

(1) The Department will not implement its decision for ten days after the State receives the explanation; or

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

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

The Secretary is responsible for:

(a) Identifying proposed Federal financial assistance that has an impact on interstate areas;

(b) Notifying the affected States, including States that have not adopted a process under the Order; and

(c) Except in unusual circumstances, providing the affected States an opportunity of at least 45 days to comment.

§ 52.9 [Reserved]

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

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

PART 50—PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

§ 50.21 [Amended]

2. In § 50.21, by removing and reserving paragraph (l).

3. In § 50.31, by revising paragraph (g)(1) and (2) to read as follows:

§ 50.31 Environmental impact statement.

* * * * *

(g) * * *

(1) *Draft EIS.* Stage one involves the preparation of a Draft EIS and the summary sheet. The Draft is sent to the EPA (5) copies, circulated to federal agencies whose areas of jurisdiction by law or special expertise are involved, any single point of contact designated by a State participating in intergovernmental review of the particular program involved under Executive Order 12372 and Part 52 of this title, the chief executive and planning agency of the appropriate state and local (county, city or town) government, appropriate local agencies, groups/individuals with special interest in the proposed action, the applicant and made available to the public. Two (2) copies of the Draft Statement and the distribution list shall also be sent to HUD Headquarters Library, Washington, D.C. 20410.

(2) *Final EIS.* The second stage is the Final EIS, which takes into account the response to the comments received as a result of circulating the Draft, and the revised summary sheet. The Final Statement which must include the comments received and HUD's response, is filed with the EPA (5 copies) sent to Federal Agencies and organizations which commented on the Draft, any single point of contact designated by a State participating in intergovernmental review of the particular program involved under Executive Order 12372 and Part 52 of this title, the chief executive and planning agency of the appropriate State and local government, appropriate local agencies, the applicant, and made available to the public. Two (2) copies of the Final Statement shall also be sent to the Assistant Secretary for CPD and one (1) copy shall be sent to HUD Headquarters Library, Washington, D.C. 20410. The Final Statement or summary shall accompany the recommendation of or report on the proposed action through HUD's review and decisionmaking process.

* * * * *

4. In § 50.35, by revising paragraph (b)(2) to read as follows:

§ 50.35 Public participation.

* * * * *

(b) * * *

(2) *Publication and dissemination.* Copies of these Notices shall be sent to the local news media, individuals and groups known to be interested in the proposed project, any single point of contact designated by a State participating in intergovernmental review of the particular program involved under Executive Order 12372 and Part 52 of this title, local, State, and Federal agencies, the appropriate Regional Office of EPA, and others believed appropriate. Actions which result in a Finding of No Significant Impact normally require only notification to the appropriate single point of contact, if any, and to an appropriate State or local agency. All other Notices shall be published at least once in a newspaper of general circulation in the affected community. If such newspaper is of a type specializing in the publication of legal, real estate, commercial or other notices, listings and advertisements and is not of a type subscribed to and read by the general public as a source of news of general public interest, then such notice shall also be published at least once in a newspaper which is a source of news of general public interest or shall be in such other manner deemed most likely to inform residents of the affected community.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

5. In Part 570, by removing and reserving the following: §§ 570.310, 570.312(g), 570.400(d), and 570.403(c)(5).

PART 590—URBAN HOMESTEADING

§ 590.11 [Amended]

6. In § 590.11, by removing and reserving paragraph (c).

PART 720—FINANCING PUBLIC AND PRIVATE NEW COMMUNITY DEVELOPMENT

§ 720.43 [Reserved]

7. In Part 720, by removing and reserving § 720.43.

PART 841—PUBLIC HOUSING DEVELOPMENT

8. In § 841.405, by revising paragraph (b) to read as follows:

§ 841.405 Technical processing and approval.

* * * * *

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

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

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

(3) Complete an environmental review in accordance with the requirements of the National Environmental Policy Act of 1969; and

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

* * * * *

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

§ 870.9 [Reserved]

9. In Part 870, removing and reserving § 870.9.

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

10. In § 880.302, by revising paragraph (c) to read as follows:

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

* * * * *

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

* * * * *

11. In § 880.304 by revising paragraph (e) to read as follows:

§ 880.304 Publication of NOFA and receipt of proposals.

* * * * *

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

* * * * *

12. In § 880.306, by revising paragraph (c) to read as follows:

§ 880.306 Preliminary evaluation and technical processing

* * * * *

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

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, design, experience of the owner and other participants, local government comments, extent of displacement and feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review of consistency with the Housing Assistnace Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

* * * * *

13. In § 880.307, by revising paragraphs (b) and (d) to read as follow:

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

* * * * *

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

* * * * *

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

* * * * *

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

14. In § 881.302, by revising paragraph (c) to read as follows.

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

* * * * *

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

* * * * *

15. In § 881.304, by revising paragraph (f) to read as follows:

§ 881.304 Publication of NOFA and receipt of proposals.

* * * * *

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

16. In § 881.306, by revising paragraph (c) to read as follows:

§ 881.306 Preliminary evaluation and technical processing.

* * * * *

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

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3) of this section), site, physical condition of the property, its suitability for rehabilitation and whether or not the work proposed is adequate and can be feasibly accomplished; overall design; experience of the owner and other participation, and local government comments, extent of displacement feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR, Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

* * * * *

17. In § 881.307, by revising paragraphs (b) and (d) to read as follows:

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

* * * * *

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

* * * * *

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

* * * * *

§§ 881.704, 881.707 [Amended]

18. In part 881, by removing and reserving the following paragraphs 881.704(b), 881.707 (f) and (j).

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

19. In § 883.403, by revising paragraph (b) to read as follows:

§ 883.403 HFA submission of proposals.

* * * * *

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

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

* * * * *

20. In § 883.405, by revising paragraph (b) to read as follows:

§ 883.405 Notification of acceptability of proposal.

* * * * *

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

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

21. In § 885.220, by removing paragraph (d)(1), by redesignating paragraphs (d) (2), (3), (4), (5) and (6) as (d) (1), (2), (3), (4) and (5) and by revising paragraphs (d) (2) and (e) to read as follows:

§ 885.220 Review of application for fund reservation.

(d) * * *

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

* * * * *

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

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

22. In § 891.202, by removing and reserving paragraph (b)(7) and by revising the introductory text to paragraph (a) as follows:

§ 981.202 Notification of local government.

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

* * * * *

23. In § 891.205, by revising paragraph (b) to read as follows:

§ 891.205 HUD review of application for housing assistance.

* * * * *

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

* * * * *

24. In § 891.303, by removing and reserving paragraph (b)(3) and by revising the introductory text to paragraph (a) as follows:

§ 891.303 Notification of local government.

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

* * * * *

25. In § 891.305, by revising paragraph (b) to read as follows:

§ 891.305 HUD review of applications for housing assistance.

* * * * *

(b) In determining whether an application will be approved, the field

LIST OF PROPOSED EXCLUSIONS FROM SCOPE

CFDA No.	Program name	24 CFR Part	Reason(s) for exclusion
14.103	Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families	236	1
14.105	Interest Reduction—Homes for Lower Income Families	235	1
14.108	Rehabilitation Mortgage Insurance	203	1
14.110	Manufactured (Mobile) Home Insurance—Financing Purchase of Mobile Homes as Principal Residences of Borrowers	201	1
14.112	Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects	234	1
14.115	Mortgage Insurance—Development of Sales Type Cooperative Projects	213	1
14.116	Mortgage Insurance—Group Practice Facilities	244	1
14.117	Mortgage Insurance—Homes	203	1
14.118	Mortgage Insurance—Homes for Certified Veterans	203	1
14.119	Mortgage Insurance—Homes for Disaster Victims	203	1
14.120	Mortgage Insurance—Homes for Low and Moderate Income Families	221	1
14.121	Mortgage Insurance—Homes in Outlying Areas	203	1
14.122	Mortgage Insurance—Homes in Urban Renewal Areas	220	1
14.123	Mortgage Insurance—Housing in Older, Declining Areas	203	1
14.124	Mortgage Insurance—Investor Sponsored Cooperative Housing	213	1
14.125	Mortgage Insurance—Land Development and New Communities	205	1
14.126	Mortgage Insurance—Management Type Cooperative Projects	213	1
14.127	Mortgage Insurance—Manufactured (Mobile) Home Parks	207	1
14.128	Mortgage Insurance—Hospitals	242	1
14.129	Mortgage Insurance—Nursing Homes and Intermediate Care Facilities	232	1
14.130	Mortgage Insurance—Purchase by Homeowners of Fee Simple Title From Lessors	240	1
14.132	Mortgage Insurance—Purchase of Sales-Type Cooperative Housing Units	213	1
14.133	Mortgage Insurance—Purchase of Units in Condominiums	234	1
14.134	Mortgage Insurance—Rental Housing	207	1
14.135	Mortgage Insurance—Rental Housing for Moderate Income Families	221	1
14.137	Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate	221	1
14.138	Mortgage Insurance—Rental Housing for the Elderly	231	1
14.139	Mortgage Insurance—Rental Housing in Urban Renewal Areas	220	1
14.140	Mortgage Insurance—Special Credit Risks	237	
14.141	Nonprofit Sponsor Assistance Program	271	2
14.142	Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures	201	1
14.149	Rent Supplements—Rental Housing for Lower Income Families	215	2
14.151	Supplemental Loan Insurance—Multifamily Rental Housing	241	1
14.152	Mortgage Insurance—Experimental Housing	233	1
14.153	Mortgage Insurance—Experimental Projects Other Than Housing	233	1
14.154	Mortgage Insurance—Experimental Rental Housing	233	1
14.155	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects	207	1
14.156	Lower Income Housing Assistance Program	882	3
14.157	Housing for the Elderly or Handicapped	885	2
14.159	Section 245 Graduated Payment Mortgage Program	203	1
14.161	Single-Family Home Mortgage Coinsurance	204	1
14.162	Mortgage Insurance—Combination and Mobile Home Lot Loans	201	1
14.163	Mortgage Insurance—Cooperative Financing	203	1
14.164	Operating Assistance for Troubled Multifamily Housing Projects	219	2
14.165	Mortgage Insurance—Homes—Military Impacted Areas	203	1
14.166	Mortgage Insurance—Homes for Members of the Armed Services	222	1
14.167	Mortgage Insurance—Two Year Operating Loss Loans, Section 223(d)	207, 221 et al	1
14.168	Land Sales—Parcels of Subdivided Land	1700–1730	7
14.171	Manufactured Housing—Mobile Home Construction	3280	7
14.207	New Communities—Loan Guarantees	710, 720	1
14.218	Community Development Block Grants/Entitlement Grants	570	4
14.220	Section 312 Rehabilitation Loans	510	4
14.222	Urban Homesteading	590	4
14.228	Community Development Block Grants/State's Program	570	4

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

* * * * * *

Dated: January 17, 1983.

Samuel R. Pierce, Jr.,

Secretary, Housing and Urban Development.

Attachment—List of Proposed Exclusions from Scope and List of Proposed Inclusions.

Attachment

LIST OF PROPOSED EXCLUSIONS FROM SCOPE—Continued

CFDA No.	Program name	24 CFR Part	Reason(s) for exclusion
14.229	Community Development Block Grants/Secretary's Discretionary Fund	570	5
14.400	Equal Opportunity in Housing	105–107	7
14.402	Nondiscrimination in Federally-Assisted Programs (On the Basis of Age)	1	7
14.403	Community Housing Resource Board Program	120	2
14.506	General Research and Technology Activity		6

Explanation of Exclusions

No. 1—The multifamily and single family mortgage insurance programs involve essentially private transactions between private mortgagees and mortgagors. HUD merely encourages the development of this housing by reducing the risk of mortgage default to the lender through insurance. Housing developed under these programs are subject to the same local regulation through zoning ordinance and building codes as is conventionally financed housing. With the exception of CFDA No. 14.105 the Section 235 Interest Reduction—Homes for Lower Income Families Program none of these programs by itself is an active production program that provides Federal financial assistance for the benefit or mortgagors or tenants. CFDA No. 14.207 New Communities-Loan Guarantees has the same characteristics as the mortgage insurance programs and is not an active production program.

No. 2—These programs are excluded because they involve the payment of financial assistance to non-governmental entities.

No. 3—The Section 8 Existing Housing Assistance Payments Program—component of CFDA No. 14.156 is excluded because HUD has no authority to approve specific sites and assistance payments are made directly to private owners.

No. 4—These programs are excluded because they involve financial transfers for which HUD has no funding discretion or direct authority to approve specific sites or projects.

No. 5—Over half of the $56 million in FY 1982 funds for CFDA No. 14.229 Community Development Block Grants/Secretary's Discretionary Fund was used for Indian assistance. Nine percent was for Territories and 38 percent was for Technical Assistance which normally is not site specific.

No. 6—HUD has no research projects which have a unique geographic focus. Rather, the objective of HUD research activity is to improve the operations of the Department's programs. The Department obtains research services through a competitive procurement process; it does not provide financial assistance grants.

No. 7—These programs although listed in the Catalogue of Federal Domestic Assistance are not within the scope of E.O. 12372 because they are not Federal financial assistance programs.

General Exclusion

Any program, even if not otherwise excluded for the reasons stated above, is excluded to the extent that it involves a federally recognized Indian tribe.

LIST OF PROPOSED INCLUSIONS

CFDA No.	Program Name	24 CFR Part	Comments
14.146	Low Income Housing—Assistance Program	841	2
14.147	Low Income Housing—Homeownership Opportunities for Low Income Families	804	2
14.156	Lower Income Housing Assistance Program	880, 881, 883, 884 and 886	1, 2
14.158	Public Housing—Comprehensive Improvement Assistance Program	868	
14.169	Housing Counseling Program		
•14.170	Manufactured Housing—Mobile Home Construction	3280	
•14.211	Surplus Land for Low and Moderate Income Housing		
14.219	Community Development Block Grants/Small Cities Program	570	
14.221	Urban Development Action Grants	570	
14.401	Fair Housing Assistance Program	111	

Comments on Inclusions

No. 1—All programs included under CFDA No 14.156 Lower Income Housing Assistance Program with the exception of the Section 8 Existing Housing Assistance Payments Programs are to be included under the scope of these regulations.

No. 2—These programs are subject to the local review requirements of Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) as implemented by 24 CFR Part 891, Subparts B and C. States may wish to consider these procedures in determining whether to include or exclude these programs from their process and in developing their process.

[FR Doc. 83-4387 Filed 2-22-83; 8:45 am]

BILLING CODE 4210-01-M

FROM WY DATE 2-2-83

ADMINISTRATION	ADVANCE PLANS	CURRENT PLANS	GRAPHICS
☐ Lakin	☐ Stockwell	☐ Galbraith	☐ Pierce
☐ Walter	☐ Schwartz	☐ Lytle	☐ Commer
☐ Doramus	☐ Leivo	☐ Young	☐ Crook
☐ Eubanks	☐ Bechtel	☒ Chambers	☐ Garland
☐ Hanson	☐ Curfman	☐ Fleck	☐ Singhal
☐ Henderson	☐ Dudark	☐ Nagley	☐ Whitney
☐ Lakin, E.	☐ Flynn	☐ Olivarez	☐ —
☐ Nelson	☐ Hart	☐ Shirkey	
☐ Scott	☐ Losew	☐ McDonald	
☐ —	☐ Shen		
	☐ Spain		
	☐ Vinson		
	☐ —		

○ Note & Return ○ Signature
○ Handle ○ Library
○ All Staff ● Information
○ Comment ● Files

REMARKS

T9-105

american public transit association

apta bulletin

Jack R. Gilstrap
Executive Vice President

REGULATORY ALERT

January 28, 1983

Enclosed for your information is a Department of Transportation Notice of Proposed Rulemaking (NPRM) implementing changes in the A-95 process required by a recent Presidential Executive Order.

The Notice was published in the January 24, 1983 Federal Register. Comments are due March 10, 1983.

The proposed rule makes major changes to the local A-95 process for intergovernmental review and greatly strengthens the role of the states.

PLEASE GIVE THIS PROPOSAL CAREFUL REVIEW AND PROVIDE THE APTA PLANNING AND POLICY DEPARTMENT WITH COPIES OF YOUR AGENCIES COMMENTS TO DOT.

1225 Connecticut Avenue, N.W., Washington, D.C. 20036 Phone (202) 828-2800

Development of Proposed Regulations

If the objectives of the Executive Order are to be met, Federal agencies must ensure that they deal with state and local elected officials in a consistent and understandable way. To this end, the Federal agencies affected by the Order have worked together to make common policy decisions and, to the extent feasible, to draft common regulatory language. The agencies involved chose an approach that minimizes the imposition of regulatory requirements on non-Federal parties. For the most part, these proposed regulations will spell out the Department's obligations and procedures in response to the views expressed by state and local elected officials. A paper discussing the policy decisions made by the agencies and OMB was made available to the public in December (47 FR 57369, December 23, 1982). Following the close of the comment period, the agencies will again work together with the aim of promulgating final rules that are substantially consistent with one another. It is the Federal Government's intention that there will be no further rulemaking with respect to this Executive Order.

The Executive Order mandates the implementation of final regulations by April 30, 1983. It will not be possible to have an adequate comment period and meet this deadline if the normal 30-day delay between the publication date of a final rule and its effective date is observed. Consequently, the Department proposes to make the final rule effective immediately upon its publication on April 30.

As a matter of style, the proposed rules use the present tense when describing the Department's obligations. For example, when the proposed regulation says that the Secretary "provides the State with a timely explanation," the regulation requires the Secretary to do so.

Removal of Regulations Implementing OMB Circular A-95

In connection with this proposed rulemaking, the Department is proposing to remove its existing regulations implementing former OMB Circular A-95. Executive Order 12372 directed OMB to revoke the Circular itself, and the OMB directive revoking the circular told Federal agencies to leave their A-95 regulations in place only until new regulations implementing the Order were promulgated on April 30, 1983. In order to carry out this directive, the Department is listing in this notice those regulatory provisions implementing Circular A-95 that it proposes to remove. Final rules carrying out the removal will be published on or about April 30, 1983, in conjunction with the Department's final rule implementing Executive Order 12372.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

The Department has determined that this is not a major rule under Executive Order 12291. The Department also has determined that the expected economic impact is so minimal that the proposal does not warrant a full evaluation. The proposed rule would simplify consultation with the Department and allow state and local governments to establish cost-effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. It is unlikely that its economic impacts will be significant, in any case. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule would not have a substantial economic impact on a significant number of small entities. This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

Section-by-Section Analysis

Section 17.1 What is the purpose of these regulations?

This section briefly states the purpose of the regulations, which is to implement Executive Order 12372 and foster an improved system of intergovernmental consultation. Paragraph (c) states the important point that the Order, and these regulations, are intended only to improve the Department's internal management of its consultation with state and local governments. Neither the Order nor these regulations are intended to create any right of judicial review of the Department's action. For example, it is not intended that a state or local government would have the right to sue the Department because the Department failed to explain a nonaccommodation of a state recommendation.

Section 17.2 What definitions apply to these regulations?

This section defines several terms used frequently in the proposed rule. "Department" means the Department of Transportation. "Order" means Executive Order 12372. "Secretary" means the Secretary of Transportation or an official or employee to the Department acting under a delegation of authority from the Secretary. This does not mean that there must be a new, specific, formal delegation pertaining to Executive Order program or activity under a delegation could act under the Order concerning that program or activity. "State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the trust territory of the Pacific Islands. The definition of "state" means that the District of Columbia, Puerto Rico, and the other jurisdictions mentioned may create an official consultation process and consult with Federal agencies on the same basis as each of the 50 states.

In addition to these definitions, three other terms—simplify, consolidate, and substitute—are defined in § 17.9, State Plans. Several other terms appearing in the Order are not defined in this section, but are used in the regulation in a way that makes their operational meaning clear (e.g., accommodate and explain in § 1707).

Section 17.3 What programs and activities of the Department are subject to these regulations?

The intent of the Order is that state and local elected officials should have the opportunity to consult with Federal agencies under the Order concerning as many Federal programs and activities as they wish. Paragraph (a) provides that the Department will publish a Federal Register notice, in conjunction with the publication of its final Executive Order 12372, rule, listing the programs and activities that are subject to the Order. Updated lists will be published when necessary in order to let states know which of the Department's programs and activities they may choose to cover.

The attachment to this preamble contains a list of those programs and activities that the Department proposes to exclude from coverage under the Order. The reason for each proposed exclusion is also listed. The Department seeks comments on the proposed exclusions. After promulgation of the final rules, if the Department wants to exclude new or additional programs or activities from coverage under the Order, it will publish a Federal Register notice requesting comment on the proposed exclusions.

At this time, states should assume that all the Department's other Federal financial assistance and direct Federal development programs will be subject to the Order. Of course, activities and programs that clearly are neither Federal financial assistance nor direct Federal development (e.g., procurement

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by the Department) are not subject to the Order. Also, the Order and these regulations do not apply to proposed regulations, legislation, budget formulation, or classified programs or activities where formal consultation would endanger national security.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials would still have an opportunity to have their views considered by the Department. Indeed, statutory requirements for consultation, such as section 401(b) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)), require Federal agencies to consider the views of state and local governments. Many of the Department's program statutes have their own consultation requirements, and the Department will, of course, comply with all existing or future statutory requirements of this kind. However, the Department is not obligated to follow the provisions of the Order and these regulations with respect to excluded programs and activities.

Paragraph (b) simply states the Secretary's obligation, to the extent permitted by law, to use a state's official process to determine official views of state and local officials. This obligation, which derives directly from the Order, extends only to programs and activities subject to the Order which a state has selected for coverage under § 17.5 of these regulations. If at any time a state believes that any official of the Department has not made appropriate use of the official state process, the state is invited to raise its concerns directly with the Secretary.

Section 17.4 [Reserved]

Section 17.5 What procedures apply to a state's choice of programs under the Order?

States may choose to consult with the Department under the Order concerning any of the Department's programs and activities that the Department's Federal Register notice on or about April 30, 1983 and subsequently lists as subject to the Order. However, these regulations do not require states to consult with the Department concerning any particular program or activity. This is an important distinction between the Order's consultation policy and the system established under Circular A-95, which gave states no discretion concerning program selection. Under the Order, each state may choose whether to use the consultation system with respect to any particular program or activity. This gives states increased flexibility to determine how best to allocate their resources. For example, many programs have existing statutory consultation systems. If a state decides that an existing consultation system is adequate, the state might choose not to cover the program under its E.O. 12372 process, thereby avoiding duplication and saving resources for use on other programs. A state also might want to decline to cover a program which has only minor effects on the state and its people.

The Department emphasizes that the choice of whether to cover a particular program or activity listed in the Department's Federal Register notice is entirely up to each state. While the Department will be happy to discuss with states the most effective ways of carrying out consultation concerning its programs and activities, the Department will not attempt to constrain the state's discretion with respect to program selection.

Paragraph (a) of this section sets out a purely administrative requirement pertaining to program selection. The state must notify the Secretary of the programs and activities it chooses to cover. When it first establishes its official process, the state can meet this requirement by sending to OMB, along with other information required to establish the process, a list of the Federal programs and activities it wishes to cover. OMB will inform each Federal agency of the programs and activities of each that the state has chosen to cover. Subsequently, the state should send all program coverage information (additions, deletions, other changes) directly to the Department. This information will enable the Department's personnel who work on a particular program or activity to know which states they must counsult with under the provisions of the Order.

Paragraph (b) provides that, once a state has established a process and made its program selections known to the Department, the Department will use the state's process concerning the programs and activities selected by the state as soon as feasible. While the Department will make every effort to use the state's process, there may be situations, on individual programs or projects, where the Department may not be able to do so for a time. The Department will make determinations concerning when to begin using the state's official process on a case-by-case basis and will let the states know when it will start to use the state process.

Paragraph (c) provides that the Department may establish deadlines by which states must inform the Department of changes in their program selection choices. A state may add or delete a program or activity from those it wishes to cover under the Order at any time. However, in order for meaningful consultation to occur under the Order, the Department may need a certain amount of "lead time" before it can adapt its procedures to the changed circumstances. For this reason, the Department may find it necessary to establish deadlines for program selection changes. These deadlines would simply be notifications to the states that, for example, if they wished to have consultation under the Order begin with respect to a particular program on a given date, they would have to inform the Department of their program selection change a certain time (e.g., 30 days, 45 days) prior to that date.

Section 17.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

Paragraph (a) points out that the Order would apply not only to comments prepared pursuant to the official state process but also to comments formulated by local elected officials to whom the state's consultation role has been delegated in specific instances. Section 3(a) of the Order permits states to delegate, to local elected officials in specific instances, the review, coordination, and communication with Federal agencies that normally take place under the state process. This means that states may choose not only which programs and activities to cover but also who within the state has the opportunity to carry out the consultation. States have complete discretion concerning delegation of their consultation role.

For example, a state could delegate to a single mayor the state's consultation role with respect to a project occurring in his or her city. The state could delegate all consultation under a particular program to officials of the local governments whose jurisdictions are affected by projects under the program. The state could delegate its consultation role for a particular program to local elected officials in cities above 250,000 population but not to local officials in smaller jurisdictions, or vice versa. In any case of delegation, the local official to whom the state's consultation role is delegated stands in the shoes of the official state process with respect to the Department. For example, efforts by the Department to reach a negotiated solution with the local official will be pursued directly with the official, not with the state itself.

The local official to whom the state's consultation role had been delegated would not send his or her comment directly to the Department. Rather, the official would sent the comment to the Department through the state single point of contact. The Department would work with the local official in attempting to reach an accommodation, but, if efforts at accommodation were unsuccessful, the Department would explain the nonaccommodation to the single point of contact. Routing the delegated comment through the state single point of contact would alert the Department to the fact that the local official's comments should be dealt with under the provisions of the Order and make unnecessary a separate communication from the state to the Department informing the Department that the comment was an official comment of the state.

Section 2(b) of the Order requires Federal agencies to communicate with state and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions. Paragraph (b) incorporates this provision of the Order into these regulations. What the requirement means is the Department is obligated to make efforts to ensure that information on proposed actions or decisions of the Department is available to the states in sufficient time to be able to exert meaningful influence on the Department's course of action. For example, the Department would make sure that the state learned of assistance announcements including decision criteria, proposed Federal development project decisions, and so forth, in time to make a meaningful response.

It is difficult to specify, in advance, the precise time frames that will implement the Order's notification requirement for the Department's widely varied programs and activities. However, paragraph (c) states that, as a general rule, states choosing to cover a particular program or activity wil have at least 30 days (45 days in the case of interstate situations) to comment on proposed Federal financial assistance or direct Federal development before the Department commits itself to a given course of action. The Department, on a case-by-case basis, may allow a shorter period for comment if unusual circumstances make the shorter period necessary. Among the kinds of unusual circumstances that might necessitate a shorter comment period are an emergency, the necessity to make a grant or cooperative agreement decision before the end of a fiscal year, or a statutory deadline.

In order to meet the Order's objective of ensuring states a meaningful opportunity to influence decisions by the Department, the Department may need to establish deadlines or time frames in nonregulatory program specific announcements for comment on particular actions or types of actions. Consequently, as provided in paragraph (d), the Department may define, for its varying programs and activities, the length of comment periods and the starting points from which comment periods would begin to run. States and localities would still have at least 30 days to comment (45 days in interstate situations), except under unusual circumstances. For example, time frames may differ among different types of programs (e.g., one-year grants, multi-year grants, direct development projects, permits), for different stages of the same program (e.g., first application, renewal), or at different times (e.g., end of fiscal year, deadline for quarterly apportionment).

In some of the Department's programs, a basic decision to go forward with a project may be the key decision that determines a subsequent course of action by the Department. Once the initial decision is made, the Department has little discretion with respect to the subsequent decisions. The Department could inform states of the key decision points on which their comments are essential if the states are to have a meaningful role in influencing the Department's decision.

In most financial assistance programs, a state, local, or private agency applies to the Department for a grant or cooperative agreement or otherwise seeks Departmental approval for financial assistance to be provided. In order to receive notification of applications for financial assistance from the Department, the state should work with applicant organizations to ensure that applications are provided to the state in a timely manner. If it becomes necessary, the Department may establish requirements in nonregulatory program specific announcements for applicants to submit copies of their application to the state.

In order to ensure timely completion of Federal decisionmaking, the Department may require states to complete their reviews of applications and to submit their comments to the Secretary by a particular date. The intent of this provision is to prevent undue delays in Federal decisions affecting the state. A similar provision, in praragraph (d)(3), permits the Secretary to establish deadlines in nonregulatory program specific announcements for state review of the Department's direct development activities.

Paragraph (e) makes an important point with respect to the way that communications between states and the Department would work. Under the Order, a state may organize the mechanics of its consultation process any way it chooses. However, in order to ensure that communications between the Department and the official state process flow efficiently, the Department strongly encourages states to establish a "single point of contact" for state communications with Federal agencies. Channeling communications from the states to Federal agencies and from agencies back to the states through a single point has obvious benefits from the point of view of administrative simplicity. In addition, it will enable the Department to know which communications to treat as official under the provisions of the Order. The Department needs a means of separating the letters from state and local elected officials to which it will respond through normal correspondence channels from those letters to which it must respond under the provisions of the Order. States' use of a single point of contact will permit the Department to make this necessary administrative distinction.

In the absence of a state process, or with respect to a program that a state has not selected for coverage, the Department will work with the state, consistent with existing legal requirements. The provisions of the Order and these regulations will not apply, however.

The proposed regulation would not impose any constraints on the content of comments that states send to the Department. However, the Department would strongly encourage commenters under the Order to follow three policies which are important for the efficient operation of the Order's consultation system.

First, comments should address statutes, regulations, and other requirements governing a specific program or decision. Often, the Department is required to make a decision based on certain statutorily established factors. In other cases, the Department, through regulation or guidance, has established decisionmaking criteria for various actions. It is unlikely that the Department would be able to accommodate concerns that do not address these requirements and standards, or which are not relevant to the decisionmaking process. In order to have meaningful influence on the

Department's decisions, comments must be relevant to the factors on which the Department bases its decisions. For example, if a Department's standards call for a decision to be made at a certain stage only on the technical merits of financial assistance proposals, before consideration is given to costs, the Department could not accommodate a state comment addressing costs during the technical review.

Second, states can assist the Department's implementation of the Order by clearly specifying the magnitude of the state's concerns. Often, it may be difficult for the Department to tell whether a state is firmly recommending a given course of action, has a mild preference for or reservation about the action, or is simply seeking clarification of the Department's position. For example, if a state wants the Department to recognize the state's priorities, accept only a modified financial assistance application, or deny a financial assistance application, it would be very helpful if the state identified its position as clearly as possible. The Order directs Federal agencies to make efforts to accommodate state concerns. The Department's ability to do so successfully is dependent, to a significant degree, on the clear articulation of concerns by the states.

Third, the Department may not be in a good position to accommodate state and local concerns unless the state speaks with one voice in its comments. The Department recognizes that different state and local officials and agencies may not always agree among themselves concerning the course of action the Department should follow. The single point of contact should reconcile conflicting views before transmission, to avoid the Department's having to seek clarification concerning which set of views the state wants the Department to accommodate. The process will work much better if the Department receives a single set of comments.

Section 17.7 How does the Secretary make efforts to accommodate state and local concerns?

Paragraph (a) provides that when a state comments to the Department under the Order, the Department has three choices. The Department can accept the state's comments (i.e., do as the state recommends). Second, it can reach a mutually agreeable solution with the state. This solution can differ from the original state position on the matter. Third, if the Department cannot accept the state's comments or reach a mutually agreeable solution, the Department is obligated to give the state a timely, simple explanation of the Department's reasons for not doing so. While the Department is not required to accept the state's comments or to begin discussions towards another solution, the Department does have an obligation to provide a simple explanation of its decision.

Normally, the explanation could take any form which adequately communicates the Department's reasons for its decision to the state. A telephone call, a meeting, or a letter would perform this function. The Department has the discretion to choose the most appropriate mode of communicating the explanation in each case. The explanation is made by a designee of the Secretary.

There is one exception to the Department's discretion to choose the mode of communicating the explanation. As paragraph (a)(3)(ii) provides, the Governor of the state may request, in advance of the time the explanation is made or after it is communicated to the single point of contact, that an explanation of nonaccommodation be made in writing. When it receives such a request from a Governor, the Department's explanation will be in a letter.

Paragraph (a)(3)(iii) spells out the role of the single point of contact in receiving explanations from the Department. The Department will direct all such explanations to the single point of contact in each state that has one. This is true even where accommodation discussions have occurred between the Department and another party in the state.

Paragraph (b) concerns safeguards to ensure that the interests of states are protected in nonaccommodation situations. Paragraph (b)(1) provides that a nonaccommodation explanation will state that the Department will not implement its decision until ten days after the single point of contact receives the explanation, except as provided in paragraph (b)(2). This waiting period is intended to permit states to respond to the Department in cases of nonaccommodation before the Department has awarded a grant or cooperative agreement, begun construction of a facility, or otherwise irrevocably carried out the decision. In a case in which the Department has provided a verbal explanation of a decision to the single point of contact, and the Governor subsequently has requested a written explanation, the ten day period will start to run from the date of the original explanation to the single point of contact.

Paragraph (b)(2) recognizes that there will be some situations in which the Department cannot observe the ten-day waiting period. These unusual circumstances could include, for example, a statutory deadline, emergency, or end of a fiscal year situation that may make it infeasible for the Department to wait ten days before implementing its decision. In a situation where the Department cannot observe the waiting period, the Secretary or a designee of the Secretary at a higher level than the official responsible for making the original decision will review the decision before the nonaccommodation explanation is made and before the Department implements the decision. The nonaccommodation explanation will inclued the Department's reasons for determining that the ten-day waiting period is not feasible.

Section 17.8 What are the Secretary's obligations in interstate situations?

In some cases, action taken by the Department in Federal financial assistance and direct Federal development programs may have an impact on interstate areas. In these situations, the Department has certain additional obligations. First, the Department must identify its direct Federal development or Federal financial assistance actions or decisions that have an impact on interstate areas. Having done so, the Department must, as provided in paragraph (b), notify the potentially affected states, whether or not they have established an official state process under the Order. Except in unusual circumstances (e.g., emergencies, financial assistance awards at the end of the fiscal year), the Department must provide the affected states an opportunity for comment of at least 45 days before the Department commits itself to a course of action. The increase in the minimum comment period from 30 to 45 days in interstate situations allows extra time for states to coordinate among themselves before providing views to the Department.

The Department, obviously, cannot require states to coordinatae with each other on proposed Federal assistance or direct development having an impact on an interstate area. However, the Department strongly encourages each affected state to share its comments with and obtain the views of other affected states, using the other state's single point of contact, if there is one, or an appropriate state official if there is not a single point of contact. The Department encourages states to reconcile differences where they exist.

so that the states can present the Department with a unified position. If the affected states provide the Department with conflicting recommendations, the Department will, with respect to states that have established a process under the Order, accommodate recommendations to the extent possible and explain its nonaccommodations of other points of view as provided in § 17.11.

Section 17.9 How May a State Simplify, Consolidate, or Substitute Federally Required State Plans?

This section carries out section 2(d) of the Order, which directs Federal agencies to "allow" states to consolidate or simplify plans and to "encourage" states to substitute their own plans for Federally required state plans.

Paragraph (a) defines three terms used in this section. For a state to "simplify" a plan means that a state may develop its own format, choose its own submission date, and select the planning period covered by the plan. "Consolidate" means that the state may meet statutory and regulatory requirements by combining two or more plans into one document. The state may also select the format, submission date, and planning period for a consolidated plan. "Substitute" means that a state may use a plan or other document that is developed for its own purposes to meet Federal requirements in place of a plan mandated by the Department. State plans required by the Department that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order will be listed by the Department in an OMB notice published in today's Federal Register.

For purposes of state plan modifications, it is necessary to draw a distinction between the state's decision concerning which plans it wants to try to modify and the Department's decision concerning whether to accept modified plans. Paragraph (b) deals with the first of these issues. A state may decide to try to simplify, consolidate or substitute state plans without prior approval by the Department. The state's discretion in this respect is complete.

Paragraph (c) points out that the Department will review the content of state proposals to simplify, consolidate, or substitute state plans to ensure that they meet all applicable Federal requirements. Under this provision, the Department could disapprove the content of a modified plan on the basis, for example, of legal insufficiency, the failure of the modified plan to meet Federally mandated substantive standards, or insufficiency of state planning or budgeting systems. If the Department disapproves a state plan, the state may have recourse to any existing appeal process of the Department applicable to the program in question. However, the Department does not propose any new special appeal process for situations in which the Department does not accept a modified plan.

This paragraph is not intended to give the Department any new authority it does not already have to review or disapprove state plans. For example, if a statute limits the grounds on which the Department may disapprove a state plan submission, this paragraph is not intended to expand those limits. The paragraph does emphasize, however, that these regulations do not impair the Department's existing authority to review and, if necessary, disapprove state plans. This section also does not affect any existing statutory or regulatory requirements concerning submission dates, planning periods, or formats of state plans. The Department will review and make appropriate modifications in regulatory requirements without a statutory basis to allow more state flexibility.

The Department's ability to review state plans is important not only for the Department's ability to administer its programs effectively but also to prevent states from inadvertently causing delays in Departmental funding decisions. In many financial assistance programs, required program standards must be met through a state plan before Federal funds are awarded. The Department may not be in a position to award funds to recipients if a plan does not meet legal requirements or substantive Federal program standards.

The Department encourages states which wish to simplify, consolidate or substitute state plans to inform the Department well in advance of their intentions. Early discussions between state officials and the Department regarding proposed modifications of plans will help to avoid later problems, including unexpected delays or disapprovals of modifications. The Department is very willing to work closely with state officials on plan modifications and, where feasible, will provide technical assistance or advice in plan modification efforts.

Section 17.10 May the Secretary Waive Any Provision of These Regulations?

This section allows the Secretary to waive any provision in these regulations in an emergency. The Department expects to use this provision sparingly, since the Department's policy is to carry out the Order as fully as it can.

List of Subjects in 49 CFR Part 17

Intergovernmental relations.

Issued at Washington, D.C., January 14, 1983.

Andrew L. Lewis,

Secretary of Transportation.

Attachment—List of Proposed Exclusions From Scope

The Department proposes to exclude the following financial assistance programs from the scope of Executive Order 12372 and these regulations:

1. *National Highway Traffic Safety Administration/Federal Highway Administration*—Highway Safety Research and Development Program (23 U.S.C. 403). Section 403 grants can be made to state or local agencies, institutions, and individuals for research into highway safety issues. The program and grants under it do not have any specific geographic focus, and affect states and localities in which research takes place only slightly and incidentally. As a general matter, research programs of this type are not appropriate for coverage under the Order.

2. *Maritime Administration*—Grants to Students at State Maritime Academies. The Maritime Administration provides financial aid to students at state-operated maritime academies. These grants are direct payments to individuals, and consequently are not appropriate for coverage under the Order.

3. *Federal Aviation Administration*—Aircraft Guarantee Loan Program. The Aircraft Loan Guarantee Program is a financial assistance program aimed exclusively at non-governmental entities. Loan guarantees are given to partnerships or corporations rather than political subdivisions. Inclusion under the Order would require publication of confidential financial and operational data of applicants for loan guarantees. The interstate nature of most applicants' operations precludes identification of an appropriate state or local government for coordination purposes. Accordingly, this program is not appropriate for coverage under the Order.

4. *Federal Aviation Administration*—Minor Items of Acquisition or Construction Under the Airport Aid Program. Under the authority of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*; "AADA") and the Airport and Airway Improvement Act of 1982 (Pub. L. 97–248; "AAIA"), the FAA has provided, and will continue to provide, grants for

airport development. This program will be covered by the Executive Order. However, the FAA proposes not to cover certain minor items of acquisition or construction that involve only routine or minor changes to an airport or do not change the use, scale, or intensity of use of an airport. These minor items of acquisition and construction, which are unlikely to have significant effects on state or local governments, were, with OMB approval, excepted from A-95 notification and review procedures. These exceptions to A-95 procedures have been published in Appendix E to 14 CFR Part 152, which this notice proposes to delete. The effect of this proposed exclusion is to continue the exception of these items from formal intergovernmental consultation procedures.

5. *Federal Aviation Administration*—The National Airport System Plan (NASP) and the National Plan of Integrated Airport Systems. The NASP identifies airports that are important elements in the national transportation system and describes the development that will be warranted over the ensuing ten years. The NASP is an unconstrained report of needs, and it contains considerably more development than could be financed with Federal aid. Development must be included in the NASP to be eligible for an airport aid grant, but inclusion does not represent Federal approval or commit Federal funds. One of the basic purposes of the NASP is to inform Congress and the public about the state of the airport system, viewed from a Federal perspective.

The NASP is prepared from the "bottom up." Local governments prepare master plans for specific airports, state governments and regional planning agencies incorporate these into system plans, and the FAA identifies the airports that have national significance. The FAA relies heavily on state and local plans, and makes Federal aid available to help fund these plans.

The National Plan of Integrated Airport Systems, which will replace the NASP in accordance with Pub. L. 97-248, will be a similar document and essentially the same procedures will be followed in preparing it.

Since coordinated planning is already an integral part of the preparation of these plans, it would not be appropriate to apply the procedures contemplated by the Order to the completed plan.

6. *Federal Aviation Administration*—Lease or Purchase of Land or Space for FAA Air Navigation or Air Traffic Control Facilities. As a general matter, FAA leases or purchases of land or space for air navigation or air traffic control facilities will be covered by the Order. However, there are some minor lease or purchase actions which are so minor as to have a minimal impact on the local community or state or local governments. In these cases, compliance with the Order would have no significant benefit and could impose disproportionate administrative burdens.

The types of actions which fall into this category, and which FAA proposes to exclude from coverage under the Order, include (1) lease of space in existing buildings; (2) lease of space for a firm term of one year or less; (3) lease of land for a firm term of one year or less; (4) purchase of land or easements for existing operational facilities; (5) purchase of 3 acres or less of land and associated easements and rights-of-way for new facilities.

The Department proposes to bring all its other financial assistance and direct development programs and activities under the coverage of the Order. Programs and activities of the Department which are neither direct development nor financial assistance (e.g., FAA air traffic control, Coast Guard search and rescue) are, of course, not covered under the Order.

The Department seeks comment on whether to exclude the programs mentioned above and on whether any other DOT financial assistance or direct development programs or activities should be excluded from the scope of the Order.

1. For the reasons set out in the Preamble, the Department of Transportation proposes to amend Title 49 Code of Federal Regulations, by adding a new Part 17, to read as follows:

Title 49—[Amended]

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF TRANSPORTATION PROGRAMS AND ACTIVITIES

Sec.
17.1 What is the purpose of these regulations?
17.2 What definitions apply to these regulations?
17.3 What programs and activities of the Department are subject to these regulations?
17.4 Reserved
17.5 What procedures apply to a state's choice of programs under the Order?
17.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?
17.7 How does the Secretary make efforts to accommodate state and local concerns?
17.8 What are the Secretary's obligations in interstate situations?
17.9 How may a state simplify, consolidate, or substitute Federally required state plans?
17.10 May the Secretary waive any provision of these regulations?

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); Sec. 401(b) of Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)).

§ 17.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, issued July 14, 1982, and titled "Intergovernmental Review of Federal Programs."

(b) Executive Order 12372 is intended 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.

(c) The Order and these regulations are intended only to improve the internal management of the Department. Neither the Order nor these regulations are intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 17.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Transportation.

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

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

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

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

(a) The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to the Order and these regulations.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 17.5, the Secretary, to the extent permitted by law, uses the official state process to

determine official views of state and local elected officials.

§ 17.4 [Reserved]

§ 17.5 What procedures apply to a state's choice of programs under the Order?

(a) Each state that adopts a process under the Order notifies the Secretary of the Department's programs that the state chooses to cover under the Order.

(b) The Secretary uses a state's process under the Order as soon as feasible, depending on individual programs and projects, after the state notifies the Secretary of its program choices.

(c) States may change their program choices under the Order at any time. The Secretary may establish deadlines by which states are required to inform the Secretary of changes in their program choices.

§ 17.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) This section applies to all comments received from a state pursuant to an official process it has established under the Order, including comments where the state has delegated to local elected officials the review, coordination and communication with the Department.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 17.7, the Secretary, to the extent permitted by law, communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Except in unusual circumstances, the Secretary gives states at least 30 days to comment on any proposed Federal financial assistance or direct Federal development (see § 17.8 for comment periods pertaining to interstate situations).

(d) Subject to paragraph (c) of this section, the Secretary may establish deadlines for:

(1) Applicants to submit copies of their applications to the states; and

(2) States to complete their review of applications under a financial assistance program and to submit their comments to the Department.

(3) States to complete their review of proposed direct Federal development and to submit their comments to the Department.

(e) The Secretary responds as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and all Federal agencies.

§ 17.7 How does the Secretary make efforts to accommodate state and local concerns?

(a) If a state provides comments to the Department in accordance with § 17.6(e), the Secretary:

(1) Accepts the state's comments;

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

(3)(i) Provides the state with a timely explanation of the basis for the Department's decision.

(ii) If requested by the Governor, the Secretary provides the explanation in writing.

(iii) If the state has designated a state office or official as a single point of contact between the state and all Federal agencies, the Secretary provides any explanation under paragraph (a)(3) of this section to that office or official.

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

(1) The Department will not implement its decision for ten days after the state receives the explanation; or

(2) The Secretary has reviewed the decision and determines that, because of unusual circumstances, the ten-day waiting period is not feasible.

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

The Secretary is responsible for—

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

(b) Notifying the affected states, including states that have not adopted a process under the Order; and

(c) Except in unusual circumstances, providing the affected states an opportunity of at least 45 days to comment.

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

(a) As used in this section:

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

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

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

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

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

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

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

2. The Secretary also proposes to amend the following regulations:

Title 14—[Amended]

PART 152—[AMENDED]

Appendix E—[Removed]

14 CFR Part 152, by removing Appendix E thereto in its entirety.

Title 23—[Amended]

PART 420—[AMENDED]

Subpart C—[Removed]

23 CFR Part 420, by removing Subpart C thereof in its entirety;

PART 650—[AMENDED]

§ 650.113 [Amended]

23 CFR Part 650, by removing § 650.113(b) thereof;

PART 740—[AMENDED]

§ 740.118 [Amended]

23 CFR Part 740, by removing § 740.118(e)(2) thereof, by removing the words "and the Regional and State clearinghouses" from § 740.118(e)(3) thereof, and, in § 740.118(e) thereof, by redesignating paragraph (e)(3) as paragraph (e)(2).

Title 49—[Amended]

PART 25—[AMENDED]

§ 25.29 [Amended]

49 CFR Part 25, by removing § 25.29(b) thereof;

PART 266—[AMENDED]

§ 266.15 [Amended]

49 CFR Part 266, by removing from § 266.15(a) thereof the second and third sentences, from the words "In accordance with . . ." through the words "there were no comments."

PART 450—[AMENDED]

§ 450.106 [Amended]

49 CFR Part 450, by substituting a period for the comma following the word "planning" in § 450.106(c) thereof and removing all language in that paragraph following the word "planning."

§ 450.100 [Amended]

49 CFR Part 450, by removing § 450.108(b) thereof, by substituting a period for a comma after the word "services" in § 450.108(d) thereof and removing all language in that paragraph following the word "services," and by redesignating in § 450.108 paragraph (c) as paragraph (b), paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d).

[FR Doc. 83-1710 Filed 1-21-83; 8:45 am]
BILLING CODE 4910-62-M

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OFFICE OF TECHNOLOGY AND PLANNING ASSISTANCE, I-30
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20590
(202) 426-0163

federal register

Monday
January 24, 1983

Part II

Office of Management and Budget

Implementation of Executive Order 12372, Intergovernmental Review of Federal Programs

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, Intergovernmental Review of Federal Programs

AGENCY: Intergovernmental Affairs Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Executive Order 12372, "Intergovernmental Review of Federal Programs," was signed by President Reagan on July 14, 1982. Each agency, except HUD, is issuing a proposed rule or Notice in today's **Federal Register** for public comment on implementation of this Executive Order. HUD's proposed rule will be published as soon as Congressional review, now in process, is completed. This Executive Order appears as an Attachment to this Notice.

Notice is given that all interested parties are invited to participate in a meeting on implementation of E.O. 12372. A meeting on this Order will be held in Washington, D.C. and one or more subsequent meetings may be held in Washington, D.C. or elsewhere.

Date, Time, and Location of Meeting

The meeting will be held on March 2, 1983 in Washington, D.C. Details will follow in the **Federal Register** as to time and place, as well as procedures for oral and written presentations.

FOR FURTHER INFORMATION CONTACT: For General Information on the Implementation of E.O. 12372, contact Winnifred M. Austermann, Office of the Deputy Associate Director for Intergovernmental Affairs, Office of Management and Budget, 726 Jackson Place, N.W., Room 10235, Washington, D.C. 20503, Phone: 202/395-3050.

For information on individual agency proposals, contact the person listed in the appropriate agency document published elsewhere in today's **Federal Register.**

Dated: January 12, 1983.

Harold I. Steinberg,

Associate Director for Management.

BILLING CODE 3110-01-M

Attachment

Executive Order 12372—Intergovernmental Review of Federal Programs

Note.—Executive Order 12372 was originally published in the **Federal Register** on July 16, 1982 (47 FR 30959).

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide 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 or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek 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. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,
July 14, 1982.

[FR Doc. 83-1881 Filed 1-21-83; 8:45 am]
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federal register

Monday
January 24, 1983

Part III

Office of Management and Budget

State Plans Eligible for Modification Under Executive Order 12372

OFFICE OF MANAGEMENT AND BUDGET

State Plans Eligible for Modification Under Executive Order 12372

Section 2(d) of Executive Order 12372 directs Federal agencies to "allow" states to simplify or consolidate existing Federally required State plans and, where permitted by law, to "encourage" states to substitute their own plans for Federally required state plans.

State plans required by the Federal Government that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order are listed below. The Federal Government is willing to consider other state plans for eligibility for modification under this section.

Dated: January 12, 1983.

Harold I. Steinberg,

Associate Director for Management.

Agency	CFDA No. [1]	Program title
Agriculture	10.550	Food Distribution.
	10.557	Special Supplemental Food Program for Women, Infants and Children (WIC).
	10.559	Summer Food Service Program for Children.
	10.560	State Administrative Expenses for Child Nutrition.
	10.564	Nutrition Education and Training Program.
	10.565	Commodity Supplemental Food Program.
Education	84.002	Adult Education—State Administered Programs.
	84.027	Handicapped Preschool and School Programs.
	84.034	Public Library Services.
	84.035	Interlibrary Cooperation.
	84.048	Vocational Education—Basic Grants to States.
	84.049	Vocational Education—Consumer and Homemaking Education.
	84.050	Vocational Education—Program Improvement and Supportive Services.
	84.052	Vocational Education—Special Programs for the Disadvantaged.
	84.121	Vocational Education—State Planning and Evaluation.
	84.126	Rehabilitation Services—Basic Support.
Energy	81.041	State Energy Conservation.
	81.042	Weatherization Assistance for Low-Income Persons.
	81.043	Supplemental State Energy Conservation.
	81.052	Energy Conservation for Institutional Buildings.
HHS	13.630	Administration on Developmental Disabilities—Basic Support and Advocacy Grants.
	13.633	Special Programs for the Aging—Title II, Parts A and B—Grants for Supportive Services and Senior Centers.
	13.635	Special Programs for the Aging—Title III, Part C—Nutrition Services.
	13.645	Child Welfare Services—State Grants.
	13.646	WIN.
	13.659	Adoption Assistance.
Interior	15.252	Abandoned Mine Land Reclamation Program.
	15.605	Fish Restoration.
	15.611	Wildlife Restoration.
	15.916	Outdoor Recreation—Acquisition, Development and Planning.
	15.904	Historic Preservation Grants-in-Aid.
Justice	16.540	Juvenile Justice and Delinquency Prevention—Allocation to States.
	16.541	Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance.
Labor	17.207	Employment Service.
Transportation	20.308	Local Rail Service Assistance.
	20.600	State and Highway Community Safety.
	20.700	Gas Pipeline Safety.
EPA	66.001	Air Pollution Control Program Grants.
	66.419	Water Pollution Control—State and Interstate Program Grants.
	—	Water Quality Management Planning.
	66.432	State Public Water System Supervision Program Grants.
	66.433	State Underground Water Source Protection Program Grants.
	66.438	Construction Management Assistance Grants.
	66.451	Hazardous Waste Management Financial Assistance to States.
	66.600	Environmental Protection Consolidated Grants—Program Support.
	66.700	Pesticides Enforcement Program Grants.
	—	Pesticides Applicator Certification and Training.
FEMA	83.503	Emergency Management Assistance.
	83.505	State Disaster Preparedness Grants.
	83.506	Earthquake and Hurricane Loss Study and Contingency Planning Grants.
	83.516	Disaster Assistance: Two Subprograms— 1. Temporary Housing (if the State assumes operational responsibility); 2. Individual and Family Grants.

[1] CFDA = Catalog of Federal Domestic Assistance.

[FR Doc. 83-1662 Filed 1-21-83; 8:45 am]

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federal register

Monday
January 24, 1983

Part XIV

Department of Transportation

Office of the Secretary

Intergovernmental Review of Department of Transportation Programs and Activities

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 152

23 CFR Parts 420, 650, and 740

49 CFR Parts 17, 25, 266, and 450

[OST Docket No. 77; Notice No. 83-1]

Intergovernmental Review of Department of Transportation Programs and Activities

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement Executive Order 12372, "Intergovernmental Review of Federal Programs." It applies to Federal financial assistance and direct Federal development programs and activities of the Department of Transportation. Executive Order 12372, and these proposed regulations, are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They provide for a new, more effective, intergovernmental consultation system. Under the Order, state and local elected officials, not the Federal government, will determine what Federal programs and activities to review and the procedures by which the review will take place.

DATE: Comments must be received on or before March 10, 1983.

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 77, Department of Transportation, 400 7th Street, S.W., Room 10421, Washington, D.C., 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time and date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9:00 a.m. to 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Room 10421, Washington, D.C., 20590. (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Background

For many years, consultation between state and local officials and Federal agencies concerning Federal programs and activities has taken place through an elaborate regulatory and organizational framework created under OMB Circular A-95. The A-95 system required state and local governments to follow prescribed review procedures and to review specified Federal programs, regardless of the circumstances affecting particular state and local governments. The system also required review of Federal programs by state and local agencies without regard to the priorities of their elected leadership. The A-95 process became highly bureaucratic, burdensome, and costly. States and localities had to process too much paperwork, and, as a result the impact of substantive comments was sometimes lost. A network of state an area clearinghouses was created to manage this paperwork. State and local elected officials found it difficult to exert significant influence on Federal decisions through this system, and Federal agencies found the system a cumbersome method of obtaining information about, and responding appropriately to, state and local concerns.

On July 14, 1982, President Reagan signed Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order is reproduced as Attachment A to the OMB notice published in today's **Federal Register**. The Order directs the revocation of Circular A-95, and provides for a new, more effective, intergovernmental consultation system that is consistent with the President's policies concerning Federalism and regulatory relief. Under the Order, states and localities will take the initiative for establishing review procedures and priorities. State and local elected officials, not the Federal Government, will determine, within the scope of the Order, which Federal programs and activities to review and the procedures by which the review will take place. When state and local elected officials bring their concerns to a Federal agency's attention through this process, the agency will have to make efforts to accommodate the concerns, and, if it does not accommodate them, explain why not. This "accommodate or explain" provision gives greater weight to state and local views than Circular A-95 did. In addition, states will have the opportunity, to the extent permitted by law, to simplify, consolidate, or substitute Federally required state plans.

Across the whole range of Federal programs and activities, the Federally required procedures for consultation under Circular A-95 created a substantial regulatory burden. The Executive Order's system of consultation will significantly reduce that burden, as well as opening opportunities for states to reduce administrative burdens in Federal programs requiring state plans. In contrast to the A-95 system, which relied heavily on clearinghouses, planning organizations, and other bodies which are not elected by the jurisdictions they serve, the Order, consistent with the President's Federalism policy, emphasizes the role of elected State and local officials.

OMB Guidance to States

In order to assist states as they begin their work in implementing the Order, OMB wrote on or before today to each state concerning the establishment of an official state process. This letter will be reproduced in the **Federal Register** in the next few days. This letter explains the role of the "single point of contact." A "single point of contact" is the one office or official in a state that transmits the result of the state review and coordination with recommendations that differ from the Federal proposal to the Department and other Federal agencies and to which the Department directs official communications (e.g., explanations of nonaccommodation) to the state under the Order. A state may have as few or as many entities as it chooses to perform review and coordination and to conduct discussions with the Department. However, there should be only one point of contact to officially transmit recommendations for change to communicate with all Federal agencies under the Order. It is up to the state whether the single point of contact plays a substantive role with respect to the state's views, or simply acts as a focal point for official communications.

It is also worth emphasizing that states are not required to adopt an official state process at all. However, after final rules implementing the Order become effective (they will be published on or about April 30, 1983), the existing Federal A-95 consultation regulations will no longer be in effect. Other existing statutory consultation requirements are not affected by this proposed rule. An inventory of these existing requirements will be available.

This Department and other Federal agencies have the basic responsibility of ensuring that their programs and activities are carried out in conformity with the Order's provisions. OMB will have general government-wide oversight responsibility for the implementation of the Order, but will not attempt to exercise any day-to-day, operational control of agency actions. Nor will OMB act as a forum for "appeals" of agency actions by non-Federal parties.

Development of Proposed Regulations

If the objectives of the Executive Order are to be met, Federal agencies must ensure that they deal with state and local elected officials in a consistent and understandable way. To this end, the Federal agencies affected by the Order have worked together to make common policy decisions and, to the extent feasible, to draft common regulatory language. The agencies involved chose an approach that minimizes the imposition of regulatory requirements on non-Federal parties. For the most part, these proposed regulations will spell out the Department's obligations and procedures in response to the views expressed by state and local elected officials. A paper discussing the policy decisions made by the agencies and OMB was made available to the public in December (47 FR 57369, December 23, 1982). Following the close of the comment period, the agencies will again work together with the aim of promulgating final rules that are substantially consistent with one another. It is the Federal Government's intention that there will be no further rulemaking with respect to this Executive Order.

The Executive Order mandates the implementation of final regulations by April 30, 1983. It will not be possible to have an adequate comment period and meet this deadline if the normal 30-day delay between the publication date of a final rule and its effective date is observed. Consequently, the Department proposes to make the final rule effective immediately upon its publication on April 30.

As a matter of style, the proposed rules use the present tense when describing the Department's obligations. For example, when the proposed regulation says that the Secretary "provides the State with a timely explanation," the regulation requires the Secretary to do so.

Removal of Regulations Implementing OMB Circular A-95

In connection with this proposed rulemaking, the Department is proposing to remove its existing regulations implementing former OMB Circular A-95. Executive Order 12372 directed OMB to revoke the Circular itself, and the OMB directive revoking the circular told Federal agencies to leave their A-95 regulations in place only until new regulations implementing the Order were promulgated on April 30, 1983. In order to carry out this directive, the Department is listing in this notice those regulatory provisions implementing Circular A-95 that it proposes to remove. Final rules carrying out the removal will be published on or about April 30, 1983, in conjunction with the Department's final rule implementing Executive Order 12372.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

The Department has determined that this is not a major rule under Executive Order 12291. The Department also has determined that the expected economic impact is so minimal that the proposal does not warrant a full evaluation. The proposed rule would simplify consultation with the Department and allow state and local governments to establish cost-effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. It is unlikely that its economic impacts will be significant, in any case. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule would not have a substantial economic impact on a significant number of small entities. This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

Section-by-Section Analysis

Section 17.1 What is the purpose of these regulations?

This section briefly states the purpose of the regulations, which is to implement Executive Order 12372 and foster an improved system of intergovernmental consultation. Paragraph (c) states the important point that the Order, and these regulations, are intended only to improve the Department's internal management of its consultation with state and local governments. Neither the Order nor these regulations are intended to create any right of judicial review of the Department's action. For example, it is not intended that a state or local government would have the right to sue the Department because the Department failed to explain a nonaccommodation of a state recommendation.

Section 17.2 What definitions apply to these regulations?

This section defines several terms used frequently in the proposed rule. "Department" means the Department of Transportation. "Order" means Executive Order 12372. "Secretary" means the Secretary of Transportation or an official or employee to the Department acting under a delegation of authority from the Secretary. This does not mean that there must be a new, specific, formal delegation pertaining to Executive Order program or activity under a delegation could act under the Order concerning that program or activity. "State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the trust territory of the Pacific Islands. The definition of "state" means that the District of Columbia, Puerto Rico, and the other jurisdictions mentioned may create an official consultation process and consult with Federal agencies on the same basis as each of the 50 states.

In addition to these definitions, three other terms—simplify, consolidate, and substitute—are defined in § 17.9, State Plans. Several other terms appearing in the Order are not defined in this section, but are used in the regulation in a way that makes their operational meaning clear (e.g., accommodate and explain in § 1707).

Section 17.3 What programs and activities of the Department are subject to these regulations?

The intent of the Order is that state and local elected officials should have the opportunity to consult with Federal agencies under the Order concerning as many Federal programs and activities as they wish. Paragraph (a) provides that the Department will publish a **Federal Register** notice, in conjunction with the publication of its final Executive Order 12372, rule, listing the programs and activities that are subject to the Order. Updated lists will be published when necessary in order to let states know which of the Department's programs and activities they may choose to cover.

The attachment to this preamble contains a list of those programs and activities that the Department proposes to exclude from coverage under the Order. The reason for each proposed exclusion is also listed. The Department seeks comments on the proposed exclusions. After promulgation of the final rules, if the Department wants to exclude new or additional programs or activities from coverage under the Order, it will publish a **Federal Register** notice requesting comment on the proposed exclusions.

At this time, states should assume that all the Department's other Federal financial assistance and direct Federal development programs will be subject to the Order. Of course, activities and programs that clearly are neither Federal financial assistance nor direct Federal development (e.g., procurement

by the Department) are not subject to the Order. Also, the Order and these regulations do not apply to proposed regulations, legislation, budget formulation, or classified programs or activities where formal consultation would endanger national security.

Even if a program or activity is excluded from the consultation system established by the Order, state and local officials would still have an opportunity to have their views considered by the Department. Indeed, statutory requirements for consultation, such as section 401(b) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)), require Federal agencies to consider the views of state and local governments. Many of the Department's program statutes have their own consultation requirements, and the Department will, of course, comply with all existing or future statutory requirements of this kind. However, the Department is not obligated to follow the provisions of the Order and these regulations with respect to excluded programs and activities.

Paragraph (b) simply states the Secretary's obligation, to the extent permitted by law, to use a state's official process to determine official views of state and local officials. This obligation, which derives directly from the Order, extends only to programs and activities subject to the Order which a state has selected for coverage under § 17.5 of these regulations. If at any time a state believes that any official of the Department has not made appropriate use of the official state process, the state is invited to raise its concerns directly with the Secretary.

Section 17.4 [Reserved]

Section 17.5 What procedures apply to a state's choice of programs under the Order?

States may choose to consult with the Department under the Order concerning any of the Department's programs and activities that the Department's **Federal Register** notice on or about April 30, 1983 and subsequently lists as subject to the Order. However, these regulations do not require states to consult with the Department concerning any particular program or activity. This is an important distinction between the Order's consultation policy and the system established under Circular A–95, which gave states no discretion concerning program selection. Under the Order, each state may choose whether to use the consultation system with respect to any particular program or activity. This gives states increased flexibility to determine how best to allocate their resources. For example, many programs have existing statutory consultation systems. If a state decides that an existing consultation system is adequate, the state might choose not to cover the program under its E.O. 12372 process, thereby avoiding duplication and saving resources for use on other programs. A state also might want to decline to cover a program which has only minor effects on the state and its people.

The Department emphasizes that the choice of whether to cover a particular program or activity listed in the Department's **Federal Register** notice is entirely up to each state. While the Department will be happy to discuss with states the most effective ways of carrying out consultation concerning its programs and activities, the Department will not attempt to constrain the state's discretion with respect to program selection.

Paragraph (a) of this section sets out a purely administrative requirement pertaining to program selection. The state must notify the Secretary of the programs and activities it chooses to cover. When it first establishes its official process, the state can meet this requirement by sending to OMB, along with other information required to establish the process, a list of the Federal programs and activities it wishes to cover. OMB will inform each Federal agency of the programs and activities of each that the state has chosen to cover. Subsequently, the state should send all program coverage information (additions, deletions, other changes) directly to the Department. This information will enable the Department's personnel who work on a particular program or activity to know which states they must counsult with under the provisions of the Order.

Paragraph (b) provides that, once a state has established a process and made its program selections known to the Department, the Department will use the state's process concerning the programs and activities selected by the state as soon as feasible. While the Department will make every effort to use the state's process, there may be situations, on individual programs or projects, where the Department may not be able to do so for a time. The Department will make determinations concerning when to begin using the state's official process on a case-by-case basis and will let the states know when it will start to use the state process.

Paragraph (c) provides that the Department may establish deadlines by which states must inform the Department of changes in their program selection choices. A state may add or delete a program or activity from those it wishes to cover under the Order at any time. However, in order for meaningful consultation to occur under the Order, the Department may need a certain amount of "lead time" before it can adapt its procedures to the changed circumstances. For this reason, the Department may find it necessary to establish deadlines for program selection changes. These deadlines would simply be notifications to the states that, for example, if they wished to have consultation under the Order begin with respect to a particular program on a given date, they would have to inform the Department of their program selection change a certain time (e.g., 30 days, 45 days) prior to that date.

Section 17.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

Paragraph (a) points out that the Order would apply not only to comments prepared pursuant to the official state process but also to comments formulated by local elected officials to whom the state's consultation role has been delegated in specific instances. Section 3(a) of the Order permits states to delegate, to local elected officials in specific instances, the review, coordination, and communication with Federal agencies that normally take place under the state process. This means that states may choose not only which programs and activities to cover but also who within the state has the opportunity to carry out the consultation. States have complete discretion concerning delegation of their consultation role.

For example, a state could delegate to a single mayor the state's consultation role with respect to a project occurring in his or her city. The state could delegate all consultation under a particular program to officials of the local governments whose jurisdictions are affected by projects under the program. The state could delegate its consultation role for a particular program to local elected officials in cities above 250,000 population but not to local officials in smaller jurisdictions, or vice versa. In any case of delegation, the local official to whom the state's consultation role is delegated stands in the shoes of the official state process with respect to the Department. For example, efforts by the Department to reach a negotiated solution with the local official will be pursued directly with the official, not with the state itself.

And what did KS decide?

The local official to whom the state's consultation role had been delegated would not send his or her comment directly to the Department. Rather, the official would sent the comment to the Department through the state single point of contact. The Department would work with the local official in attempting to reach an accommodation, but, if efforts at accommodation were unsuccessful, the Department would explain the nonaccommodation to the single point of contact. Routing the delegated comment through the state single point of contact would alert the Department to the fact that the local official's comments should be dealt with under the provisions of the Order and make unnecessary a separate communication from the state to the Department informing the Department that the comment was an official comment of the state.

Section 2(b) of the Order requires Federal agencies to communicate with state and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions. Paragraph (b) incorporates this provision of the Order into these regulations. What the requirement means is the Department is obligated to make efforts to ensure that information on proposed actions or decisions of the Department is available to the states in sufficient time to be able to exert meaningful influence on the Department's course of action. For example, the Department would make sure that the state learned of assistance announcements including decision criteria, proposed Federal development project decisions, and so forth, in time to make a meaningful response.

It is difficult to specify, in advance, the precise time frames that will implement the Order's notification requirement for the Department's widely varied programs and activities. However, paragraph (c) states that, as a general rule, states choosing to cover a particular program or activity wil have at least 30 days (45 days in the case of interstate situations) to comment on proposed Federal financial assistance or direct Federal development before the Department commits itself to a given course of action. The Department, on a case-by-case basis, may allow a shorter period for comment if unusual circumstances make the shorter period necessary. Among the kinds of unusual circumstances that might necessitate a shorter comment period are an emergency, the necessity to make a grant or cooperative agreement decision before the end of a fiscal year, or a statutory deadline.

In order to meet the Order's objective of ensuring states a meaningful opportunity to influence decisions by the Department, the Department may need to establish deadlines or time frames in nonregulatory program specific announcements for comment on particular actions or types of actions. Consequently, as provided in paragraph (d), the Department may define, for its varying programs and activities, the length of comment periods and the starting points from which comment periods would begin to run. States and localities would still have at least 30 days to comment (45 days in interstate situations), except under unusual circumstances. For example, time frames may differ among different types of programs (e.g., one-year grants, multi-year grants, direct development projects, permits), for different stages of the same program (e.g., first application, renewal), or at different times (e.g., end of fiscal year, deadline for quarterly apportionment).

In some of the Department's programs, a basic decision to go forward with a project may be the key decision that determines a subsequent course of action by the Department. Once the initial decision is made, the Department has little discretion with respect to the subsequent decisions. The Department could inform states of the key decision points on which their comments are essential if the states are to have a meaningful role in influencing the Department's decision.

In most financial assistance programs, a state, local, or private agency applies to the Department for a grant or cooperative agreement or otherwise seeks Departmental approval for financial assistance to be provided. In order to receive notification of applications for financial assistance from the Department, the state should work with applicant organizations to ensure that applications are provided to the state in a timely manner. If it becomes necessary, the Department may establish requirements in nonregulatory program specific announcements for applicants to submit copies of their application to the state.

In order to ensure timely completion of Federal decisionmaking, the Department may require states to complete their reviews of applications and to submit their comments to the Secretary by a particular date. The intent of this provision is to prevent undue delays in Federal decisions affecting the state. A similar provision, in prараgraph (d)(3), permits the Secretary to establish deadlines in nonregulatory program specific announcements for state review of the Department's direct development activities.

Paragraph (e) makes an important point with respect to the way that communications between states and the Department would work. Under the Order, a state may organize the mechanics of its consultation process any way it chooses. However, in order to ensure that communications between the Department and the official state process flow efficiently, the Department strongly encourages states to establish a "single point of contact" for state communications with Federal agencies. Channeling communications from the states to Federal agencies and from agencies back to the states through a single point has obvious benefits from the point of view of administrative simplicity. In addition, it will enable the Department to know which communications to treat as official under the provisions of the Order. The Department needs a means of separating the letters from state and local elected officials to which it will respond through normal correspondence channels from those letters to which it must respond under the provisions of the Order. States' use of a single point of contact will permit the Department to make this necessary administrative distinction.

In the absence of a state process, or with respect to a program that a state has not selected for coverage, the Department will work with the state, consistent with existing legal requirements. The provisions of the Order and these regulations will not apply, however.

The proposed regulation would not impose any constraints on the content of comments that states send to the Department. However, the Department would strongly encourage commenters under the Order to follow three policies which are important for the efficient operation of the Order's consultation system.

First, comments should address statutes, regulations, and other requirements governing a specific program or decision. Often, the Department is required to make a decision based on certain statutorily established factors. In other cases, the Department, through regulation or guidance, has established decisionmaking criteria for various actions. It is unlikely that the Department would be able to accommodate concerns that do not address these requirements and standards, or which are not relevant to the decisionmaking process. In order to have meaningful influence on the

Department's decisions, comments must be relevant to the factors on which the Department bases its decisions. For example, if a Department's standards call for a decision to be made at a certain stage only on the technical merits of financial assistance proposals, before consideration is given to costs, the Department could not accommodate a state comment addressing costs during the technical review.

Second, states can assist the Department's implementation of the Order by clearly specifying the magnitude of the state's concerns. Often, it may be difficult for the Department to tell whether a state is firmly recommending a given course of action, has a mild preference for or reservation about the action, or is simply seeking clarification of the Department's position. For example, if a state wants the Department to recognize the state's priorities, accept only a modified financial assistance application, or deny a financial assistance application, it would be very helpful if the state identified its position as clearly as possible. The Order directs Federal agencies to make efforts to accommodate state concerns. The Department's ability to do so successfully is dependent, to a significant degree, on the clear articulation of concerns by the states.

Third, the Department may not be in a good position to accommodate state and local concerns unless the state speaks with one voice in its comments. The Department recognizes that different state and local officials and agencies may not always agree among themselves concerning the course of action the Department should follow. The single point of contact should reconcile conflicting views before transmission, to avoid the Department's having to seek clarification concerning which set of views the state wants the Department to accommodate. The process will work much better if the Department receives a single set of comments.

Section 17.7 How does the Secretary make efforts to accommodate state and local concerns?

Paragraph (a) provides that when a state comments to the Department under the Order, the Department has three choices. The Department can accept the state's comments (i.e., do as the state recommends). Second, it can reach a mutually agreeable solution with the state. This solution can differ from the original state position on the matter. Third, if the Department cannot accept the state's comments or reach a mutually agreeable solution, the Department is obligated to give the state a timely, simple explanation of the Department's reasons for not doing so. While the Department is not required to accept the state's comments or to begin discussions towards another solution, the Department does have an obligation to provide a simple explanation of its decision.

Normally, the explanation could take any form which adequately communicates the Department's reasons for its decision to the state. A telephone call, a meeting, or a letter would perform this function. The Department has the discretion to choose the most appropriate mode of communicating the explanation in each case. The explanation is made by a designee of the Secretary.

There is one exception to the Department's discretion to choose the mode of communicating the explanation. As paragraph (a)(3)(ii) provides, the Governor of the state may request, in advance of the time the explanation is made or after it is communicated to the single point of contact, that an explanation of nonaccommodation be made in writing. When it receives such a request from a Governor, the Department's explanation will be in a letter.

Paragraph (a)(3)(iii) spells out the role of the single point of contact in receiving explanations from the Department. The Department will direct all such explanations to the single point of contact in each state that has one. This is true even where accommodation discussions have occurred between the Department and another party in the state.

Paragraph (b) concerns safeguards to ensure that the interests of states are protected in nonaccommodation situations. Paragraph (b)(1) provides that a nonaccommodation explanation will state that the Department will not implement its decision until ten days after the single point of contact receives the explanation, except as provided in paragraph (b)(2). This waiting period is intended to permit states to respond to the Department in cases of nonaccommodation before the Department has awarded a grant or cooperative agreement, begun construction of a facility, or otherwise irrevocably carried out the decision. In a case in which the Department has provided a verbal explanation of a decision to the single point of contact, and the Governor subsequently has requested a written explanation, the ten day period will start to run from the date of the original explanation to the single point of contact.

Paragraph (b)(2) recognizes that there will be some situations in which the Department cannot observe the ten-day waiting period. These unusual circumstances could include, for example, a statutory deadline, emergency, or end of a fiscal year situation that may make it infeasible for the Department to wait ten days before implementing its decision. In a situation where the Department cannot observe the waiting period, the Secretary or a designee of the Secretary at a higher level than the official responsible for making the original decision will review the decision before the nonaccommodation explanation is made and before the Department implements the decision. The nonaccommodation explanation will inclued the Department's reasons for determining that the ten-day waiting period is not feasible.

Section 17.8 What are the Secretary's obligations in interstate situations?

In some cases, action taken by the Department in Federal financial assistance and direct Federal development programs may have an impact on interstate areas. In these situations, the Department has certain additional obligations. First, the Department must identify its direct Federal development or Federal financial assistance actions or decisions that have an impact on interstate areas. Having done so, the Department must, as provided in paragraph (b), notify the potentially affected states, whether or not they have established an official state process under the Order. Except in unusual circumstances (e.g., emergencies, financial assistance awards at the end of the fiscal year), the Department must provide the affected states an opportunity for comment of at least 45 days before the Department commits itself to a course of action. The increase in the minimum comment period from 30 to 45 days in interstate situations allows extra time for states to coordinate among themselves before providing views to the Department.

The Department, obviously, cannot require states to coordinatae with each other on proposed Federal assistance or direct development having an impact on an interstate area. However, the Department strongly encourages each affected state to share its comments with and obtain the views of other affected states, using the other state's single point of contact, if there is one, or an appropriate state official if there is not a single point of contact. The Department encourages states to reconcile differences where they exist,

so that the states can present the Department with a unified position. If the affected states provide the Department with conflicting recommendations, the Department will, with respect to states that have established a process under the Order, accommodate recommendations to the extent possible and explain its nonaccommodations of other points of view as provided in § 17.11.

Section 17.9 How May a State Simplify, Consolidate, or Substitute Federally Required State Plans?

This section carries out section 2(d) of the Order, which directs Federal agencies to "allow" states to consolidate or simplify plans and to "encourage" states to substitute their own plans for Federally required state plans.

Paragraph (a) defines three terms used in this section. For a state to "simplify" a plan means that a state may develop its own format, choose its own submission date, and select the planning period covered by the plan. "Consolidate" means that the state may meet statutory and regulatory requirements by combining two or more plans into one document. The state may also select the format, submission date, and planning period for a consolidated plan. "Substitute" means that a state may use a plan or other document that is developed for its own purposes to meet Federal requirements in place of a plan mandated by the Department. State plans required by the Department that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order will be listed by the Department in an OMB notice published in today's **Federal Register.**

For purposes of state plan modifications, it is necessary to draw a distinction between the state's decision concerning which plans it wants to try to modify and the Department's decision concerning whether to accept modified plans. Paragraph (b) deals with the first of these issues. A state may decide to try to simplify, consolidate or substitute state plans without prior approval by the Department. The state's discretion in this respect is complete.

Paragraph (c) points out that the Department will review the content of state proposals to simplify, consolidate, or substitute state plans to ensure that they meet all applicable Federal requirements. Under this provision, the Department could disapprove the content of a modified plan on the basis, for example, of legal insufficiency, the failure of the modified plan to meet Federally mandated substantive standards, or insufficiency of state planning or budgeting systems. If the Department disapproves a state plan, the state may have recourse to any existing appeal process of the Department applicable to the program in question. However, the Department does not propose any new special appeal process for situations in which the Department does not accept a modified plan.

This paragraph is not intended to give the Department any new authority it does not already have to review or disapprove state plans. For example, if a statute limits the grounds on which the Department may disapprove a state plan submission, this paragraph is not intended to expand those limits. The paragraph does emphasize, however, that these regulations do not impair the Department's existing authority to review and, if necessary, disapprove state plans. This section also does not affect any existing statutory or regulatory requirements concerning submission dates, planning periods, or formats of state plans. The Department will review and make appropriate modifications in regulatory requirements without a statutory basis to allow more state flexibility.

The Department's ability to review state plans is important not only for the Department's ability to administer its programs effectively but also to prevent states from inadvertently causing delays in Departmental funding decisions. In many financial assistance programs, required program standards must be met through a state plan before Federal funds are awarded. The Department may not be in a position to award funds to recipients if a plan does not meet legal requirements or substantive Federal program standards.

The Department encourages states which wish to simplify, consolidate or substitute state plans to inform the Department well in advance of their intentions. Early discussions between state officials and the Department regarding proposed modifications of plans will help to avoid later problems, including unexpected delays or disapprovals of modifications. The Department is very willing to work closely with state officials on plan modifications and, where feasible, will provide technical assistance or advice in plan modification efforts.

Section 17.10 May the Secretary Waive Any Provision of These Regulations?

This section allows the Secretary to waive any provision in these regulations in an emergency. The Department expects to use this provision sparingly, since the Department's policy is to carry out the Order as fully as it can.

List of Subjects in 49 CFR Part 17

Intergovernmental relations.

Issued at Washington, D.C., January 14, 1983.

Andrew L. Lewis,
Secretary of Transportation.

Attachment—List of Proposed Exclusions From Scope

The Department proposes to exclude the following financial assistance programs from the scope of Executive Order 12372 and these regulations:

1. *National Highway Traffic Safety Administration/Federal Highway Administration*—Highway Safety Research and Development Program (23 U.S.C. 403). Section 403 grants can be made to state or local agencies, institutions, and individuals for research into highway safety issues. The program and grants under it do not have any specific geographic focus, and affect states and localities in which research takes place only slightly and incidentally. As a general matter, research programs of this type are not appropriate for coverage under the Order.

2. *Maritime Administration*—Grants to Students at State Maritime Academies. The Maritime Administration provides financial aid to students at state-operated maritime academies. These grants are direct payments to individuals, and consequently are not appropriate for coverage under the Order.

3. *Federal Aviation Administration*—Aircraft Guarantee Loan Program. The Aircraft Loan Guarantee Program is a financial assistance program aimed exclusively at non-governmental entities. Loan guarantees are given to partnerships or corporations rather than political subdivisions. Inclusion under the Order would require publication of confidential financial and operational data of applicants for loan guarantees. The interstate nature of most applicants' operations precludes identification of an appropriate state or local government for coordination purposes. Accordingly, this program is not appropriate for coverage under the Order.

4. *Federal Aviation Administration*—Minor Items of Acquisition or Construction Under the Airport Aid Program. Under the authority of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.;* "AADA") and the Airport and Airway Improvement Act of 1982 (Pub. L. 97–248; "AAIA"), the FAA has provided, and will continue to provide, grants for

airport development. This program will be covered by the Executive Order. However, the FAA proposes not to cover certain minor items of acquisition or construction that involve only routine or minor changes to an airport or do not change the use, scale, or intensity of use of an airport. These minor items of acquisition and construction, which are unlikely to have significant effects on state or local governments, were, with OMB approval, excepted from A-95 notification and review procedures. These exceptions to A-95 procedures have been published in Appendix E to 14 CFR Part 152, which this notice proposes to delete. The effect of this proposed exclusion is to continue the exception of these items from formal intergovernmental consultation procedures.

5. *Federal Aviation Administration*—The National Airport System Plan (NASP) and the National Plan of Integrated Airport Systems. The NASP identifies airports that are important elements in the national transportation system and describes the development that will be warranted over the ensuing ten years. The NASP is an unconstrained report of needs, and it contains considerably more development than could be financed with Federal aid. Development must be included in the NASP to be eligible for an airport aid grant, but inclusion does not represent Federal approval or commit Federal funds. One of the basic purposes of the NASP is to inform Congress and the public about the state of the airport system, viewed from a Federal perspective.

The NASP is prepared from the "bottom up." Local governments prepare master plans for specific airports, state governments and regional planning agencies incorporate these into system plans, and the FAA identifies the airports that have national significance. The FAA relies heavily on state and local plans, and makes Federal aid available to help fund these plans.

The National Plan of Integrated Airport Systems, which will replace the NASP in accordance with Pub. L. 97-248, will be a similar document and essentially the same procedures will be followed in preparing it.

Since coordinated planning is already an integral part of the preparation of these plans, it would not be appropriate to apply the procedures contemplated by the Order to the completed plan.

6. *Federal Aviation Administration*—Lease or Purchase of Land or Space for FAA Air Navigation or Air Traffic Control Facilities. As a general matter, FAA leases or purchases of land or space for air navigation or air traffic control facilities will be covered by the Order. However, there are some minor lease or purchase actions which are so minor as to have a minimal impact on the local community or state or local governments. In these cases, compliance with the Order would have no significant benefit and could impose disproportionate administrative burdens.

The types of actions which fall into this category, and which FAA proposes to exclude from coverage under the Order, include (1) lease of space in existing buildings; (2) lease of space for a firm term of one year or less; (3) lease of land for a firm term of one year or less; (4) purchase of land or easements for existing operational facilities; (5) purchase of 3 acres or less of land and associated easements and rights-of-way for new facilities.

The Department proposes to bring all its other financial assistance and direct development programs and activities under the coverage of the Order. Programs and activities of the Department which are neither direct development nor financial assistance (e.g., FAA air traffic control, Coast Guard search and rescue) are, of course, not covered under the Order.

The Department seeks comment on whether to exclude the programs mentioned above and on whether any other DOT financial assistance or direct development programs or activities should be excluded from the scope of the Order.

1. For the reasons set out in the Preamble, the Department of Transportation proposes to amend Title 49 Code of Federal Regulations, by adding a new Part 17, to read as follows:

Title 49—[Amended]

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF TRANSPORTATION PROGRAMS AND ACTIVITIES

Sec.
17.1 What is the purpose of these regulations?
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Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); Sec. 401(b) of Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)).

§ 17.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, issued July 14, 1982, and titled "Intergovernmental Review of Federal Programs."

(b) Executive Order 12372 is intended 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.

(c) The Order and these regulations are intended only to improve the internal management of the Department. Neither the Order nor these regulations are intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 17.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Transportation.

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

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

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

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

(a) The Secretary publishes in the **Federal Register** a list of the Department's programs and activities that are subject to the Order and these regulations.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 17.5, the Secretary, to the extent permitted by law, uses the official state process to

determine official views of state and local elected officials.

§ 17.4 [Reserved]

§ 17.5 What procedures apply to a state's choice of programs under the Order?

(a) Each state that adopts a process under the Order notifies the Secretary of the Department's programs that the state chooses to cover under the Order.

(b) The Secretary uses a state's process under the Order as soon as feasible, depending on individual programs and projects, after the state notifies the Secretary of its program choices.

(c) States may change their program choices under the Order at any time. The Secretary may establish deadlines by which states are required to inform the Secretary of changes in their program choices.

§ 17.6 How does the Secretary give states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) This section applies to all comments received from a state pursuant to an official process it has established under the Order, including comments where the state has delegated to local elected officials the review, coordination and communication with the Department.

(b) With respect to programs and activities that are subject to the Order and these regulations and that a state chooses to cover under § 17.7, the Secretary, to the extent permitted by law, communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Except in unusual circumstances, the Secretary gives states at least 30 days to comment on any proposed Federal financial assistance or direct Federal development (see § 17.8 for comment periods pertaining to interstate situations).

(d) Subject to paragraph (c) of this section, the Secretary may establish deadlines for:

(1) Applicants to submit copies of their applications to the states; and

(2) States to complete their review of applications under a financial assistance program end to submit their comments to the Department.

(3) States to complete their review of proposed direct Federal development and to submit their comments to the Department.

(e) The Secretary responds as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and all Federal agencies.

§ 17.7 How does the Secretary make efforts to accommodate state and local concerns?

(a) If a state provides comments to the Department in accordance with § 17.6(e), the Secretary:

(1) Accepts the state's comments;

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

(3)(i) Provides the state with a timely explanation of the basis for the Department's decision.

(ii) If requested by the Governor, the Secretary provides the explanation in writing.

(iii) If the state has designated a state office or official as a single point of contact between the state and all Federal agencies, the Secretary provides any explanation under paragraph (a)(3) of this section to that office or official.

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

(1) The Department will not implement its decision for ten days after the state receives the explanation; or

(2) The Secretary has reviewed the decision and determines that, because of unusual circumstances, the ten-day waiting period is not feasible.

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

The Secretary is responsible for—

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

(b) Notifying the affected states, including states that have not adopted a process under the Order; and

(c) Except in unusual circumstances, providing the affected states an opportunity of at least 45 days to comment.

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

(a) As used in this section:

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

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

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

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

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

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

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

2. The Secretary also proposes to amend the following regulations:

Title 14—[Amended]

PART 152—[AMENDED]

Appendix E—[Removed]

14 CFR Part 152, by removing Appendix E thereto in its entirety.

Title 23—[Amended]

PART 420—[AMENDED]

Subpart C—[Removed]

23 CFR Part 420, by removing Subpart C thereof in its entirety;

PART 650—[AMENDED]

§ 650.113 [Amended]

23 CFR Part 650, by removing § 650.113(b) thereof;

PART 740—[AMENDED]

§ 740.118 [Amended]

23 CFR Part 740, by removing § 740.118(e)(2) thereof, by removing the words "and the Regional and State clearinghouses" from § 740.118(e)(3) thereof, and, in § 740.118(e) thereof, by redesignating paragraph (e)(3) as paragraph (e)(2).

Title 49—[Amended]

PART 25—[AMENDED]

§ 25.29 [Amended]

49 CFR Part 25, by removing § 25.29(b) thereof;

PART 266—[AMENDED]

§ 266.15 [Amended]

49 CFR Part 266, by removing from § 266.15(a) thereof the second and third sentences, from the words "In accordance with . . ." through the words "there were no comments."

PART 450—[AMENDED]

§ 450.106 [Amended]

49 CFR Part 450, by substituting a period for the comma following the word "planning" in § 450.106(c) thereof and removing all language in that paragraph following the word "planning."

§ 450.100 [Amended]

49 CFR Part 450, by removing § 450.108(b) thereof, by substituting a period for a comma after the word "services" in § 450.108(d) thereof and removing all language in that paragraph following the word "services," and by redesignating in § 450.108 paragraph (c) as paragraph (b), paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d).

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