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Title 15 —Commerce and Foreign Trade

Subtitle B —Regulations Relating to Commerce and Foreign Trade

Chapter IX —National Oceanic and Atmospheric Administration, Department of Commerce

Subchapter B —Ocean and Coastal Resource Management

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PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

Authority: 16 U.S.C. 1451 *et seq.*; 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

Source: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

Subpart A—General

Source: 61 FR 33805, June 28, 1996, unless otherwise noted.

§ 923.1 Purpose and scope.

- (a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.
- (b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.
- (c) In summary, the requirements for program approval are that a State develop a management program that:
 - (1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

- (2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;
- (3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;
- (4) Identifies the inland and seaward areas subject to the management program;
- (5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;
- (6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;
- (7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;
- (8) Provides a mechanism to ensure that all state agencies will adhere to the program; and
- (9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

§ 923.2 Definitions.

- (a) The term *Act* means the Coastal Zone Management Act of 1972, as amended.
- (b) The term *Secretary* means the Secretary of Commerce and his/her designee.
- (c) The term *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.
- (d)
 - (1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:
 - (i) Energy production or transmission,
 - (ii) Recreation of a more than local nature,
 - (iii) Transportation,
 - (iv) Production of food and fiber,
 - (v) Preservation of life and property,
 - (vi) National defense,
 - (vii) Historic, cultural, aesthetic, and conservation values,
 - (viii) Mineral resources and extraction, and
 - (ix) Pollution abatement and control.

- (2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration, Nuclear Regulatory Commission; Federal Emergency Management Agency.
- (e) The term *Federal agencies principally affected* means the same as “relevant Federal agencies.” The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.
- (f) The term *Coastal State* means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of America, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.
- (g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.
- (h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:
 - (1) Coastal zone;
 - (2) Coastal waters;
 - (3) Enforceable policy;
 - (4) Estuary;
 - (5) Land use; and
 - (6) Water use.
- (i) The term *grant* means a financial assistance instrument and refers to both grants and cooperative agreements.

[61 FR 33805, June 28, 1996, as amended at 90 FR 38002, Aug. 7, 2025]

§ 923.3 General requirements.

- (a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant Federal and State agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

- (b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area.
- (c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Executive Order 11988, pertaining to floodplains.
- (d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.
- (e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:
 - (1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and
 - (2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

Source: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

§ 923.11 Uses subject to management.

- (a)
 - (1) The management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

- (2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.
- (3) The management program must explain how those uses identified in paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.
- (b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.
- (c) States should utilize the following types of analyses:
 - (1) Capability and suitability of resources to support existing or projected uses;
 - (2) Environmental impacts on coastal resources;
 - (3) Compatibility of various uses with adjacent uses or resources;
 - (4) Evaluation of inland and other location alternatives; and
 - (5) Water dependency of various uses and other social and economic considerations.
- (d) Examination of the following factors is suggested:
 - (1) Air and water quality;
 - (2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;
 - (3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;
 - (4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.
 - (5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

§ 923.12 Uses of regional benefit.

The management program must contain a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit. To this end, the management program must:

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

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

§ 923.13 Energy facility planning process.

The management program must contain a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities. (See subsection 304(5) of the Act.) This process must contain the following elements:

- (a) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;
- (b) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;
- (c) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts; and
- (d) Identification of how interested and affected public and private parties will be involved in the planning process.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart C—Special Management Areas

Source: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.20 General.

- (a) This subpart sets forth the requirements for management program approvability with respect to areas of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic Areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.
- (b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

- (a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.
- (b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:
 - (1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);
 - (2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;
 - (3) Areas of substantial recreational value and/or opportunity;
 - (4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;
 - (5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;
 - (6) Areas or urban concentration where shoreline utilization and water uses are highly competitive;
 - (7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;
 - (8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.
- (c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.
- (d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.
- (e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.
- (f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and
- (g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

§ 923.23 Other areas of particular concern.

- (a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reasonable time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21. The management program must identify an agency (or agencies) capable of formulating the necessary management policies and techniques.
- (b) The management program must meet the requirements of § 923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

§ 923.24 Shorefront access and protection planning.

- (a) The management program must include a definition of the term “beach” and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.
- (b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.
- (c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.
- (d) The management program must contain a definition of the term “beach” that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.
- (e) The management program must contain an identification and description of enforceable policies, legal authorities, funding program and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

- (a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion. This planning process may be within the broader context of coastal hazard mitigation planning.
- (b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.
- (c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart D—Boundaries

Source: 61 FR 33808, June 28, 1996, unless otherwise noted.

§ 923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

§ 923.31 Inland boundary.

- (a) The inland boundary of a State's coastal zone must include:
 - (1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.
 - (2) Those special management areas identified pursuant to § 923.21;
 - (3) Waters under saline influence—waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;
 - (4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;
 - (5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

- (6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;
 - (7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.
 - (8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.
- (b) The inland boundary of a State's coastal zone may include:
- (1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.
 - (2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.
 - (3) Indian lands not held in trust by the Federal Government.
- (c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Lakeward or seaward boundary.

- (a)
- (1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of America, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).
 - (2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

- (b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

[61 FR 33808, June 28, 1996, as amended at 90 FR 38002, Aug. 7, 2025]

§ 923.33 Excluded lands.

- (a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.
- (b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundary.

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

Subpart E—Authorities and Organization

Source: 61 FR 33809, June 28, 1996, unless otherwise noted.

§ 923.40 General.

- (a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)
- (b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a

means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§ 923.42 through 923.44 of this subchapter.

- (c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.
- (d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)—Authorities; 306(d)(10)(A)—Control Development and Resolve Conflicts; 306(d)(10)(B)—Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

§ 923.41 Identification of authorities.

- (a)
 - (1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)
 - (2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:
 - (i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
 - (ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.
- (b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:
 - (1) Administer land and water use regulations in conformance with the policies of the management program;
 - (2) Control such development as is necessary to ensure compliance with the management program;
 - (3) Resolve conflicts among competing uses; and
 - (4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be

used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

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

- (a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).
- (b) There are 5 principal requirements that control technique A must embody in order to be approved:
 - (1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.
 - (2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.
 - (3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:
 - (i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;
 - (ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;
 - (iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:
 - (A) Prepare and adopt a plan, regulations, and ordinances for the local government and
 - (B) Enforce such plans, regulations and ordinances;
 - (iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

- (v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.
- (4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:
 - (i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and
 - (ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and
 - (iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.
- (5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:
 - (i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.
 - (ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:
 - (A) Directly enforce the entire local program;
 - (B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.
 - (C) Seek judicial relief against local government for failure to properly enforce;
 - (D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.
 - (E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

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

- (a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).
- (b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to the management program. This authority can take the form of:
 - (1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.
 - (2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.
- (c) In order to apply the networking concept, the State must:
 - (1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and
 - (2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:
 - (i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(d)(6) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.
 - (ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.
 - (3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

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

- (a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is state administrative review for consistency with the management program of all development plans, projects, or land and water use

regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings (control technique C).

- (b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.
- (c) To have control technique C approved, a State must:
 - (1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;
 - (2) Identify the State agency that will conduct this review;
 - (3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;
 - (4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and
 - (5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§ 923.45 Air and water pollution control requirements.

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act or CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

§ 923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d) (11) and (12); and 307(f). The management program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

§ 923.47 Designated State agency.

- (a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.
 - (1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and
 - (2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.
- (b)
 - (1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.
 - (2) The requirement for the single designated agency should not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:
 - (i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;
 - (ii) To what extent linkages already exist between the entity, other agencies, and local governments;
 - (iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and
 - (iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

- (a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.
- (b) Has designated a single State agency to receive and administer implementation grants;
- (c) Attests to the fact that the State has the authorities necessary to implement the management program; and
- (d) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

Source: 61 FR 33812, June 28, 1996, unless otherwise noted.

§ 923.50 General.

- (a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of variety, sometimes conflicting, interests, including:
 - (1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;
 - (2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;
 - (3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;
 - (4) The management of coastal development to improve, safeguard, and restore coastal water quality; and
 - (5) The study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.
- (b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

- (c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

- (a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.
- (b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)
- (c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart G for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)
- (d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:
 - (1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;
 - (2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;
 - (3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;
 - (4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;
 - (5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:
 - (i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

- (ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;
 - (iii) Uses which are subject to the management program;
 - (iv) Areas which are of particular concern to the management program;
 - (v) Boundary determinations;
 - (vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and
 - (vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.
- (6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

- (a) The management program must provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the State must have considered any applicable national or interstate energy plan or program.
- (b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:
 - (1) The development of the State's management program,
 - (2) The review and approval of the program by the Assistant Administrator, and
 - (3) The implementation of the program as such facilities are proposed.
- (c) In order to fulfill this requirement, States must:
 - (1) Describe the national interest in the planning for and siting of facilities considered during program development.
 - (2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.
 - (3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.
 - (4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§ 923.53 Federal consistency procedures.

- (a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following must be included:
 - (1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);
 - (2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);
 - (3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and
 - (4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).
- (b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including:
 - (1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and
 - (2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

- (a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.
- (b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefore. A copy of the request shall be sent to the other party to the disagreement.
- (c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.
- (d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.
- (e) Mediation shall terminate:

- (1) At any time the parties agree to a resolution of the serious disagreement,
 - (2) If one of the parties withdraws from mediation,
 - (3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or
 - (4) For other good cause.
- (f) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

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

The management program must be developed and adopted with the opportunity of full participation by state agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

- (a) Develop and make available general information regarding the program design, its content and its status throughout program development;
- (b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;
- (c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and
- (d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

- (a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—
 - (1) Existing on January 1 of the year in which the state's management program is submitted to the Secretary; and
 - (2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.
- (b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:
 - (1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

- (2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: Land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended; hazard mitigation plans prepared pursuant to section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.
- (3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

- (a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this Act.
- (b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.
 - (1) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas of particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;
 - (2) "Local government" refers to those defined in section 304(11) of the Act which have some form of zoning authority.
 - (3) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

- (4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.
- (5) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:
 - (i) Following State agency receipt of a written statement from a local government indicating that it either:
 - (A) Waives its right to comment; or
 - (B) Concurs with the management program decision; or
 - (C) Intends to take action which conflicts or interferes with the management program decision; or
 - (ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or
 - (iii) Following an action by a local government that conflicts or interferes with the management program decision.
- (6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

The management program must be developed and adopted after the holding of public hearings. A State must:

- (a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;
- (b) Provide a minimum of 30 days public notice of hearing dates and locations;
- (c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

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

Subpart G—Review/Approval Procedures

Source: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.60 Review/approval procedures.

- (a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR § 1506.5 (a) and (b).)
- (b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

OCM requires this information in order to adequately assess the eligibility of proposed CZMA projects. Public reporting burden for this collection of information is estimate to average XX Hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden, to Chief Stewardship Division, OCM, 1305 East-West Hwy, 10th Floor, Silver Spring, MD, 20910. This reporting is required under and is authorized under 16 U.S.C. 1451 et seq. Information submitted will be treated as public records. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.