

§923.44

15 CFR Ch. IX (1-1-04 Edition)

(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;