

the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

**PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS**

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AUTHORITY: 16 U.S.C. 1451 *et seq.*

SOURCE: 65 FR 77154, Dec. 8, 2000, unless otherwise noted.

### Subpart A—General Information

#### § 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable

State management program enforceable policies are considered.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

#### **§930.2 Public participation.**

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

#### **§930.3 Review of the implementation of the federal consistency requirement.**

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

#### **§930.4 Conditional concurrences**

(a) Federal agencies, applicants, persons and applicant agencies should co-

operate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.