

and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

**§ 99.33 Effective date of Assistant Secretary's decision.**

If, in the case of a hearing pursuant to § 98.18(b) of this chapter, the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Lead Agency, or payments will be limited to categories under other parts of the CCDF Plan not affected, shall specify the effective date for the withholding of Federal funds.

**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 is the Secretary's obligation with respect to Federal interagency coordination?
- 100.6 What procedures apply to the selection of programs and activities under these regulations?
- 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
- 100.8 How does the Secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

- 100.9 How does the Secretary receive and respond to comments?
- 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
- 100.11 What are the Secretary's obligations in interstate situations?
- 100.12 How may a state simplify, consolidate, or substitute federally required state plans?
- 100.13 May the Secretary waive any provision of these regulations?

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

SOURCE: 48 FR 29200, June 24, 1983, unless otherwise noted.

**§ 100.1 What is the purpose of these regulations?**

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

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

(c) These regulations are intended to aid the internal management of the Department, and are not 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 (HHS).

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

### § 100.3

*Secretary* means the Secretary of HHS 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?**

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

#### **§100.4 [Reserved]**

#### **§100.5 What is the Secretary's obligation with respect to Federal inter-agency coordination?**

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

#### **§100.6 What procedures apply to the selection of programs and activities under these regulations?**

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with §100.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish dead-

### 45 CFR Subtitle A (10-1-07 Edition)

lines by which states are required to inform the Secretary of changes in their program selections.

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

#### **§100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?**

(a) For those programs and activities selected by a state process under §100.6, the Secretary, to the extent permitted by law:

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

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

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

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

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

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

#### **§100.8 How does the Secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?**

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

(1) At least 30 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance