Exec. Order No. 11988
42 Federal Register 26951
1977 WL 23619 (Pres.)

Executive Order 11988

Floodplain Management

May 24, 1977

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimuze the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a) (1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A- 95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall

endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of- way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted

under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term 'agency' shall have the same meaning as the term 'Executive agency' in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term 'base flood' shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term 'floodplain' shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER -
THE WHITE HOUSE, -
May 24, 1977. -

Exec. Order No. 11988
42 Federal Register 26951
1977 WL 23619 (Pres.)
END OF DOCUMENT

trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

"(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.".

JIMMY CARTER

THE WHITE HOUSE,
May 24, 1977.

→ No. 11990

May 24, 1977, 42 F.R. 26961

PROTECTION OF WETLANDS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Sec. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514,[1] as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

1. 42 U.S.C.A. § 4321 note.

Sec. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Sec. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Sec. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Sec. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

Sec. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelization, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Sec. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Sec. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat.

640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

THE WHITE HOUSE,
May 24, 1977.

No. 11991

May 24, 1977. 42 F.R. 26967

RELATING TO PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 et seq.), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

Section 1. Subsection (h) of Section 3 (relating to responsibilities of the Council on Environmental Quality) of Executive Order No. 11514,[12] as amended, is revised to read as follows:

"(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.".

Sec. 2. The following new subsection is added to Section 2 (relating to responsibilities of Federal agencies) of Executive Order No. 11514, as amended:

"(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.".

JIMMY CARTER

THE WHITE HOUSE,
May 24, 1977.

12. 42 U.S.C.A. § 4331 note.

Exec. Order No. 12114
44 Federal Register 1957
1979 WL 25866 (Pres.)

Executive Order 12114

Environmental Effects Abroad of Major Federal Actions

January 4, 1979

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1.

1-1. Purpose and Scope. The purpose of this Executive Order is to enable responsible officials of Federal Agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Sec. 2.

2-1. Agency Procedures. Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. Information Exchange. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. Actions Included. Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against

radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. Applicable Procedures. (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(1);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. Exemption and Considerations. (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

Sec. 3.

3-1. Rights of Action. This Order is solely for the purpose of establishing internal procedures for Federal agencies of consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. Foreign Relations. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. Multi-Agency Actions. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. Certain Terms. For purposes of this Order, 'environment' means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term 'export approvals' in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. Multiple Impacts. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER
THE WHITE HOUSE,
January 4, 1979.

Exec. Order No. 12114
44 Federal Register 1957
1979 WL 25866 (Pres.)
END OF DOCUMENT

Federal Register
Vol. 47, No. 137
Friday, July 16, 1982

Presidential Documents

Title 3—

The President

Executive Order 12372 of July 14, 1982

Intergovernmental Review of Federal Programs

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

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

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

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

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

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

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

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

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

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

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

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

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

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

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

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

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

Ronald Reagan

THE WHITE HOUSE,
July 14, 1982.

[FR Doc. 82-19472
Filed 7-14-82; 3:18 pm]
Billing code 3195-01-M

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

Presidential Documents

Title 3—

The President

Executive Order 12416 of April 8, 1983

Intergovernmental Review of Federal Programs

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

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

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

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

Ronald Reagan

THE WHITE HOUSE,
April 8, 1983.

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

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 9

Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of the Interior. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act.

DATE EFFECTIVE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Office of Acquisition and Property Management, Division of Acquisition and Grants, 18th and C Streets, N.W., Washington, D.C. 20240 (202) 343-6431.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3152), the Department of the Interior along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order. Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. On March 24, 1983 (48 FR 12409) the Department published a notice in the **Federal Register** which contained a list of programs under which states may opt to use the E.O. 12372 process and a list of programs with existing consultation processes. This notice extended the comment period to April 1, 1983. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 19 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wish to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 5587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;

—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;

—Allows states to simplify, consolidate, or substitute state plans; and,

—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) a state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order provides that states are also to consult with local governments when establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;

—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;

—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in reaching a state process recommendation;

—A means of consulting with local officials; and,

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed through the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency provides the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: Preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures. For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments nsistent with the provisions of other plicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As indicated, there is to be only one single point of contact. The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact role.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions ere there is no state process ommendation. Commenting officials d entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a single point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—of areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to a state process recommendation. A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs or activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)

Portions of the final rule not listed in this table (§§ 9.5, 9.6(a), (9.7(b), and 9.8(c)) are new.

Section 9.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing Section 401 of the Intergovernmental Cooperation Act as authority, did not specifically contain provisions to implement some of its requirements.

The text of Section 401 is printed in the Department of Agriculture's final rule published elsewhere in this issue (See Supplementary Information Section USDA's document).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also provide that federal agencies carry out their responsibilities under this statute. In response, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also Section 401 of the Intergovernmental Cooperation Act. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section. A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive

Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilitie under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 9.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "state plans," "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the lists of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "emergency" and "unusual circumstances." With respect to terms like these, the dangers of overinclusiveness and underinclusiveness are particularly great. The purpose of an emergency waiver provision or discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use such provisions sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 9.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble, and this should provide sufficient information as to its meaning.

Section 9.3 What programs and activities of the Department are subject to these regulations?

Paragraphs (a) and (b) of this section are substantively very similar to paragraphs 3(a) and (c) of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order (e.g., Coast Guard search and rescue activities, procurement of military weapon systems). It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation).

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of programs and activities which are eligible for selection for a state process. While the Department did not propose any exclusions, we did propose to continue existing consultation processes and published a list of programs and activities with such processes on March 24, 1983 (48 FR 12409). Based on comments received by the Department and discussed in detail in that section of the preamble covering scope issues, the Department's rule continues to require use of existing consultation processes as proposed. To provide information on the activities and programs eligible for selection using this rule, the Department is publishing a listing of programs and activities eligible for E.O. 12372 process use. This information is being published as a separate list rather than as part of this rule to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 9.4 [Reserved]

Section 9.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek 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.

Section 9.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the **Federal Register** list prescribed by § 9.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates so rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (a), (c) and (b), respectively, of § 9.5 of the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, or short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 9.7, discussed below.

Section 9.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) incorporates materials from §§ 9.3(b) and 9.6(b) of the NPRM, except that the final regulation specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject ot the Order that are covered by a state process. This change is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this comunication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of Section 401 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the **Federal Register** or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 9.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 9.6(c) of the NPRM (redesignated § 9.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30

days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters) except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 to 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including any adjustments to the comment period that may be necessary, to directly affected state, areawide, regional or local entities regarding the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 9.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (e) of § 9.6 of the NPRM has been dropped. A new § 9.9 of the final rule describes how the Secretary receives and responds to comments.

Section 9.9 How does the Secretary receive and respond to comments?

This new section replaces § 9.6(e) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 9.6(e) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact of expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition of concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect, veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations Section 401 of the Intergovernmental Cooperation Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state/local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise could occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate of explain" procedures of § 9.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly

aided when a single, unified position is presented for response. However, several commenters said that is would be difficult to achieve or undesirable to attempt consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in section 9.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as Section 401 specifies, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for responding to comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, regional and local officials and entities may submit comments to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from Section 401. A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process should be sent to the applicant before the application is forwarded and that the applicant should attach these to the application, that the state process should be able to require a "notice of intent," that federal agencies should not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies should have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such a conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the Department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of the

communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated that what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A-95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 9.11 What are the Secretary's obligations in interstate situations?

This section is based on § 9.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments has been delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or explain that recommendation as well.

Section 9.12 How may a state simplify, consolidate or substitute Federally required state plans?

This section is unchanged from the NPRM. The Department did receive a number of comments on this section, however. Several agreed that states should be able to simplify state plans, but objected to allowing states to consolidate their plans. The reasons for these objections differed; most appeared to be from those who feared that consolidation of state plans would cause the interests of particular groups or particular programs to be ignored. As this section merely implements the requirement of the Order that federal agencies allow the consolidation of state plans, the Department had little discretion in developing this provision. In addition, the Department has the obligation to ensure that any simplified or consolidated state plan continues to meet all federal requirements. For example, a consolidated plan that failed to meet statutory or regulatory requirements for a particular program would not be accepted.

One commenter recommended that an appeals process be established to deal with situations in which federal agencies disapprove modified state plans. The Department believes that such a process is not necessary, because if a federal agency disapproves a modified plan for failure to meet federal requirements, the state can appeal the decision through normal agency mechanisms. In any event, during the review process before disapproval, the Department will work with states to resolve problems that could impede approval.

A few commenters recommended there be a federal "single point of contact" for state plans or other purposes. The Department believes this idea would not work, because of differing agency responsibilities under the wide variety of program statutes that various federal agencies carry out. In addition, federal agencies need to retain existing delegations of state plan approval authority. However, the Department and other federal agencies will each designate a focal point with whom states can deal on state plan matters. In addition, the federal agencies having state plans intend to establish an informal interagency steering group, which will meet quarterly to discuss state plan matters. Through this steering group, as well as by interagency contacts in specific situations, federal agencies will coordinate with each other in cases when states consolidate plans across federal lines. This coordination should promote consistent determinations among and within agencies on state plans.

Finally, one commenter suggested that the federal agencies develop a model state plan format that could be used by the states. While we are willing to provide suggestions in response to specific state questions (including providing formats that have been used successfully by other states), we believe that states should be free to develop their own formats to reflect their own situations. Consequently, the Department will not develop model formats, since formats developed as models for the voluntary uses of states could come to be regarded, either by federal agencies or by states, as required.

A list of state plans that may be simplified, consolidated, or substituted for, appears elsewhere in today's **Federal Register** and will be updated periodically.

Section 9.13 May the Secretary waive any provision of these regulations?

This provision is unchanged from the NPRM, although the section number is changed. A few commenters objected to this waiver provision, apparently in the belief that it was a loophole allowing federal noncompliance with the Executive Order. The Department is strongly committed to compliance with the Order, and will use the emergency waiver provision only in those rare instances where an unanticipated situation makes prompt action necessary without full compliance with all provisions of these regulations. If the Department uses the emergency waiver provision, the Department will attempt, to the extent feasible and meaningful, to involve the state process in subsequent decisionmaking concerning the matter about which the waiver was used. In addition, the Department will keep records of all situations in which the emergency waiver was used.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that he Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" role, agencies would tend to ignore these obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the ew process. OMB will periodically eview agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements and coastal zone management would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

The Department received 19 comments dealing specifically with the programs of the Department or the scope of those programs as treated in the proposed rules. Of these 19 comments, three commenters contributed a total of six comments, each of them submitting two separate comments. The comments ranged from local governments to State governments.

Seven commenters wrote to the Department before its lists of programs were available, essentially asking for the lists. The Department's lists were published in the **Federal Register** on March 24, 1983 (48 FR 12409). One of these commenters later said that it agreed with the list of programs, and with those which it could opt to use under Executive Order 12372, and agreed to incorporate existing consultation processes in its own State process. Two of the commenters included separate, but identical, lists of programs which they suggested should be available for use under the Executive Order process. The Department's list of programs under the process included all of those programs. Another of the commenters suggested that the list when finally published be standardized. Since programs vary from agency to agency, the Department does not believe that a standardized list can serve any useful purpose toward the implementation of the Executive Order. Finally, one of these commenters later stated that it would like to reserve the right to integrate or suggest adaptations to existing processes so as to include them within its State's process. The Department is not adverse to discussing these concepts in cases where existing processes actually do not meet the intent of the Executive Order.

One commenter suggested that the Department include section 9.4 in its rules as other agencies proposed to do, rather than reserve it. This section was an optional section, and the concepts contained therein were proposed for inclusion in sections 3b and 5b. The Department has decided not to change its choice.

One commenter requested the exclusion of Indian programs from coverage of the Executive Order. Since its inception, the Executive Order has been conceived as exempting federally recognized tribes from its coverage. In its proposed rule making, the Department assumed that this was understood. In the interest of clarity, however, the Department is excluding all programs for the benefit of Indian tribes. In addition, those programs which are designed solely for the benefit of the territories of the United States and the Trust Territory of the Pacific Islands are similarly excluded. Those programs affecting the territories are ones in which there is close cooperation between the individual territories and the Department through the Federal budgeting process. The territories submit budgets to the United States,

which are then passed through the President's Budget to the Congress and acted on by that body. The money appropriated to each of the territories is then passed back to the territories through the Department. It is the Department's belief that this process works well, and it was not the intent of the Executive Order to cover these programs. The Indian and Territories programs so excluded will be published in a separate Federal Register notice at a later date.

A number of commenters agreed with the Department's proposal for coverage of programs; that is, those programs with existing consultation requirements which meet the intent and spirit of the Executive Order should continue to be operated using the existing consultation processes. One of these commenters questioned the effectiveness of consultation in a few programs on some occasions. The Department is desirous of continued good relations with State and local governments, and wishes to have the existing consultation requirements continue to be effective; therefore, the Department intends to work with this commenter and any other State or local government which believes that consultation processes already in place are not being followed in a satisfactory manner.

A smaller number of commenters indicated disagreement with the concept of using existing consultation procedures as proposed by the Department. Of these, one organization commented twice stating that under Interior's concept, the State would lose the opportunity for accommodation or explanation of nonaccommodation and that the Department would lose the advantage of having single focus comments from the State. In addition, the commenter returned to us a list of programs with existing consultation processes which it would choose to include within the E.O. 12372 process. We are somewhat confused by the statement of the commenter and the list returned to us since many of the programs they choose to cover not only can be said to have accommodation, but may not be implemented without the Governor's or some other State agency's approval. In addition, some of the programs are limited in geographic scope such that they are not available to the commenter. A second commenter whose comment was dated prior to publication of our list indicated disagreement with the Department's proposal. As an example of the insufficiency of existing consultation, he cited a Department regulation which he contends is in violation of Federal statutes. We do not understand why the commenter did not bring this alleged violation to the Department's attention earlier. It does not require a formal consultation process to alert a Federal agency to a potential violation of law. Since the program cited by the commenter is one which is available for the States to include within the Executive Order 12372 process, and since the commenter provided no other examples, it may be that this commenter's concerns have been covered. It is the Department's intention to continue existing consultation processes insofar as they meet with the spirit and intent of the Executive Order. It is not the Department's intent to thwart the clear benefit of federalism as expressed in the Executive Order. As stated in the preamble to our proposed rule, the Department believes that the existing processes meet that intent while providing State and local governments with meaningful opportunities to comment and to share in the planning and implementation of the Department's programs and activities. By asking for comments on this concept and soliciting comments on the individual programs once the list was published, the Department wished to find out if its perceptions were correct or, alternatively, if there were widespread problems with the existing consultation processes. From the comments received the Department believes there may be some individual instances where Departmental bureaus have not followed existing processes or where a State or local government perceives a lack of preferred involvement in the Department's programs and activities. The comments do not, however, indicate a wide-spread dissatisfaction with those processes, whether they be processes required by statute or regulation, or informal processes. While we are retaining our scope regulation as originally published and the list of programs as published, the Department invites individual states to discuss the implementation of consultation in individual programs.

Four commenters provided us with a list of programs that they indicated should be covered by the process under the Executive Order. All of the programs mentioned by two commenters are covered. One commenter listed four Indian programs which have been discussed above, one program with an existing consultation process (which is inapplicable geographically) and seven programs which may be included within a State process under the Executive Order. The fourth commenter, as discussed earlier, listed programs not applicable in its area; therefore, we intend to work with the commenter as it develops its internal process.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

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

List of Subjects in 43 CFR Part 9

Intergovernmental relations.

For the reasons set out in the Preamble, the Department of Interior amends Title 43, Code of Federal Regulations, by adding a new Part 9, to read as follows:

Dated: June 9, 1983.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

PART 9—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE INTERIOR PROGRAMS AND ACTIVITIES

Sec.

Sec.

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506).

§ 9.1 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.

(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.

§ 9.2 What definitions apply to these regulations?

"Department" means the U.S. Department of the Interior.

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

"Secretary" means the Secretary of the U.S. Department of the Interior 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.

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

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

(b) With respect to programs and activities that a state chooses to cover, and that have existing consultation processes, the state must agree to adopt those existing processes.

§ 9.4 [Reserved]

§ 9.5 What is the Secretary's obligation with respect to federal interagency 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.

§ 9.6 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 § 9.3 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 deadlines 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.

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

(a) For those programs and activities covered by a state process under § 9.6, 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.

§ 9.8 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 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 other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

§ 9.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 9.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 9.6.

(b) (1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by a single point of contact, the Secretary follows the procedures of § 9.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 9.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

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

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of the section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

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

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

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

(a) The Secretary is responsible for:

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

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activitiy;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 9.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 9.10 if a state process provides a state process recommendation to the Department through a single point of contact.

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

(a) As used in this section:

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

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

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

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

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

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

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

[FR Doc. 83-16711 Filed 6-23-83; 8:45 am]
BILLING CODE 4310-10-M

amount of the second mortgage will be zero. If the teacher sells the home, does not continue to live in the home as his or her sole residence, or becomes an owner of any other residential real property before the three year residency requirement is complete, he or she will owe HUD the amount due on the second mortgage.

(d) *FHA mortgage insurance.* If the home is eligible for an FHA-insured mortgage, the teacher may choose to finance the home with an FHA-insured mortgage. In this case, the downpayment for the home will be $100.

(e) *Local governments, school districts, and nonprofit organizations.* Local governments, school districts, and private nonprofit organizations may purchase homes through the TND Initiative, if they intend to resell these homes directly to eligible teachers under the terms and conditions of the TND Initiative. To avoid the cost of a dual closing, local governments, school districts, and private nonprofit organizations will have to assign the sales contract to an eligible teacher before, or at the time of, closing or participate in a three-party closing with the eligible teacher.

(f) *Real estate brokers.* Teachers may use the services of a real estate broker. Any fee required by the broker, however, will be deducted from the 50% discount on the home.

(g) *Single-unit homes.* Only single-unit homes are eligible under the TND Initiative. Detached homes, condominiums, and townhouses are all eligible under the Initiative.

(h) *Revitalization areas.* Homes purchased through the TND Initiative must be located in HUD-designated revitalization areas.

(i) *One year program.* The TND Initiative is a temporary program that will operate from November 1999 to November 2000.

IV. For More Information About the TND Initiative

Teachers, local governments, public school districts, private nonprofit organizations, and other interested persons can receive a brochure about the TND Initiative by calling (800) 483–7342, or by visiting HUD's Web site at http://www.hud.gov.

Dated: November 30, 1999.

William C. Apgar,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 99–31632 Filed 12–6–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Relationship of Interior Programs to E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice contains revisions being made to a list of programs and activities eligible for E.O. 12372, "Intergovernmental Review of Federal Programs" and a list of programs and activities with existing consultation processes. This list was originally published as a notice in the **Federal Register** on June 24, 1983 (49 FR 29235–29236) and was subsequently revised in **Federal Register** notices published on March 7, 1984 (49 FR 8495), February 7, 1985 (50 FR 5316–5317), and March 18, 1997 (62 FR 12835–12836). These publications should be referred to and except for the changes indicated in today's notice, there are no further changes being made at this time. Updated names of bureau and office Intergovernmental Review Coordinators are included in the section below for contacts for further information. These names are also listed on the Internet at *http://www.ios.doi.gov/pam/pamfao1.html.*

EFFECTIVE DATES: This notice shall become effective on December 7, 1999.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, Director (Office of Acquisition and Property Management) 202–208–6431. Department of the Interior Intergovernmental Review Coordinators: Ceceil C. Belong (Departmental Contact) 202–208–3474; National Park Service; Ken Compton (Recreation Grants Division) 202–565–1140, Loran Fraser (Policy Division) 202–208–7456, Joe Wallis (Preservation Assistance Division) 202–343–9564; Office of Surface Mining Reclamation and Enforcement, Barbara Ramey 202–208–2843; Minerals Management Service, Dennis Buck 703–787–1370; Bureau of Land Management, Marc Gress 406–657–6927; US Fish and Wildlife Service, Phyllis Cook 703–358–1943; U.S. Geological Survey, Gary Hill 703–648–4451; Bureau of Reclamation, Linda Waring-Wilson 303–445–2450 and Stephanie Bartlett 303–445–2427.

What Are the Changes to the List of Programs Under Which States May Opt To Use the E.O. 12372 Process?

Administering Bureau: Office of Surface Mining Reclamation and Enforcement
Catalog No. 15.253
15.253, "Not-for-Profit AMD Reclamation" is added to the list.

Administering Bureau: Bureau of Reclamation
Catalog No. 15.506
15.506, "Water Desalination Research and Development Program" is added to the list.

Administering Bureau: U.S. Fish and Wildlife Service
Catalog Nos. 15.622 and 15.623
Program Nos. 15.622, "Sportfishing and Boating Safety Act," and 15.623, "North American Wetlands Conservation Fund," are added to the list.

Administering Bureau: National Park Service
Catalog Nos. 15.923 and 15.926
Program Nos. 15.923, "National Center for Preservation Technology and Training," and 15.926, American Battlefield Protection," are added to the list.

What Are the Changes to the List of Interior Programs With Existing Consultation Processes?

Bureau: Bureau of Reclamation
The entry for "Desalination Research and Development—42 U.S.C. 7815–16 should be removed from the list. This activity is covered under 15.506 which is being added to the list of covered programs.

Dated: November 23, 1999.

John Berry,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 99–31605 Filed 12–6–99; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Self-Governance Program Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed agency information collection activities; comment request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from current and potential Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number, 1076–0143, will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding grants, and to meet reporting requirements of the Self-Governance Act.

the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch Attention: Allison Eydt, New Executive Office Building, Room 10235 Washington, D.C. 20503.

Dated: March 13, 1997.

Edwin J. Glatzel,

Director Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97-6825 Filed 3-17-97; 8:45 am]

BILLING CODE 4120-03-P

Public Health Service

Second Food and Nutrition Board Workshop on B Vitamins

AGENCY: Office of Disease Prevention and Health Promotion, Public Health Service, DHHS.

ACTION: Second Food and Nutrition Board Workshop on B Vitamins; notice of meeting and request for information.

SUMMARY: The Food and Nutrition Board (FNB), Institute of Medicine, National Academy of Sciences, under the auspices of the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, will hold an open workshop to address the nutrients thiamin, riboflavin, niacin, vitamin B-6, pantothenic acid, and biotin.

DATES: The open meeting will be held from 12:30 until 5:30 p.m. P.D.T. on May 20, 1997, and from 8:00 a.m. until 12:30 p.m. P.D.T. on March 21, 1997, at the Arnold and Mabel Beckman Center Auditorium, National Academy of Sciences and Engineering, 100 Academy Drive, Irvine, California. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Diane Johnson, Program Assistant, Food and Nutrition Board, 2101 Constitution Avenue, NW., Washington, DC 20418, (202) 334-1312, or send an e-mail to FNB@NAS.EDU.

SUPPLEMENTARY INFORMATION: Speakers have been invited to present evidence bearing on requirements and adverse effects, if any, of high levels of intake of thiamin, riboflavin, niacin, vitamin B-6, pantothenic acid, and biotin. Information presented will be considered by the committee in its development of Dietary Reference Intakes for these nutrients. Interested individuals and organizations are encouraged to provide written scientific information for the committee's use. Those wishing to be considered for a brief oral presentation should submit an abstract with references to FNB, 2101 Constitution Ave., NW., Washington, DC 20418, by May 2, 1997. The study for which this meeting is being held is supported by the Department of Health and Human Services (Office of Disease Prevention and Health Promotion, Office of Public Health and Science; Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention; and Office of Dietary Supplements, Office of Disease Prevention, National Institutes of Health). The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Diane Johnson at (202) 334-1312 by 4:30 p.m. E.D.T. on May 12, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 97-6709 Filed 3-17-97; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Relationship of Interior Programs to E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice contains revisions being made to a list of programs and activities eligible for E.O. 12372, "Intergovernmental Review of Federal Programs" process use and a list of programs and activities with existing consultation processes. This list was originally published as a notice in the **Federal Register** on June 24, 1983 (48 FR 29235-29236) and was subsequently revised in **Federal Register** notices published on March 7, 1984 (49 FR 8495) and February 7, 1985 (50 FR 5316-5317). These publications should be referred to and except for the changes indicated in today's notice, there are no further changes being made at this time. Updated names of bureau and office Intergovernmental Review Coordinators are included in the section below for contacts for further information.

EFFECTIVE DATES: This notice shall become effective on March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, (Director, Procurement and Property Management Systems), (202) 208-3336, Department of the Interior Intergovernmental Review Coordinators Cecell C. Belong (Departmental Contact) 202-208-3474; *National Park Service;* Ken Compton (Recreation Grants Division) 202-343-3700, Geraldine Smith (Policy Division) 202-208-7456, Joe Wallis (Heritage Preservation Services Division) 202-343-9564; *Office of Surface Mining Reclamation and Enforcement,* Barbara Ramey 202-208-2843; *Minerals Management Service,* Dennis Buck 703-787-1370; *Bureau of Land Management,* Tom Walker 202-208-4896; *U.S. Fish and Wildlife Service,* Phyllis Cook 703-358-1943; *U.S. Geological Survey,* Gary Hill 703-648-4451; *Bureau of Reclamation,* Patricia Zelazny 303-236-3750.

Programs Under Which States May Opt to Use E.O. 12372 Process

Administering Bureau: National Park Service

Catalog No. 15.904

The Program Name should be corrected to state, "Historic Preservation Fund Grants-in-Aid" rather than "Historic Preservation-Grants-in-Aid."

Catalog No. 15.920.

This program should be deleted because the Budget authority has expired.

Administering Bureau: Bureau of Reclamation.

Catalog Nos. 15.501, 15.502, and 15.503 and the Atmospheric Water Resources Management Program Research.

The above referenced programs should be deleted from the list because they are no longer functional and have been removed from the *Catalog of Federal Domestic Assistance.*

Administering Bureau: U.S. Fish and Wildlife Service.

Catalog No. 15.605.

The Program name should be corrected to state, "Sport Fish Restoration," to be consistent with the new title in the *Catalog of Federal Domestic Assistance.*

Catalog Nos. 15.600 and 15.612.

The above referenced programs should be deleted from the list because the Budget authority for them has expired and they have been removed from the *Catalog of Federal Domestic Assistance.*

Catalog Nos. 15.614, 15.615. 15.616, 15.617, and 15.618.

Program Nos. 15.614, "Coastal Wetlands Planning, Protection and Restoration Act," 15.615, "Cooperative Endangered Species Conservation Fund," 15.616, "Clean Vessel Act," 15.617, "Wildlife Conservation and Appreciation," and 15.618, "Administrative Grants

for Federal Aid in Sport Fish and Wildlife Restoration" are added to the list in order to be consistent with covered programs included in the *Catalog of Federal Domestic Assistance.*

Interior Programs With Existing Consultation Processes

Bureau: Fish and Wildlife Service

The entries for Established Research and Research at Cooperative Units should be deleted since these activities are no longer the responsibility of the U.S. Fish and Wildlife Service.

Bureau: Bureau of Mines

The entry for the Bureau of Mines, "State Mining and Mineral Resources and Research Institutes," should be deleted from the list because the Budget authority has expired and the program has been removed from the *Catalog of Federal Domestic Assistance.*

Bureau: Bureau of Reclamation

The following program should be added to the list of programs administered by this bureau:

5. Desalination Research and Development—42 U.S.C. 7815–16.

Bureau: U.S. Geological Survey

The following entries should be added to the list of activities administered by this bureau:

4. Established Research—16 U.S.C. 661–661c, 742a–742l, 757a–757l, 778–778c, 931–939c.

5. Research at Cooperative Units—16 U.S.C. 753a–b.

Dated: March 10, 1997.

Robert J. Lamb,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 97–6744 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–RF–M

Bureau of Land Management

[WY–920–07–1320–00]

Powder River Regional Coal Team Activities; Schedule of Public Meeting

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of schedule of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) announces that it has scheduled its annual public meeting for April 23, 1997 for the following purposes: (1) review current and proposed activities in the Powder River Coal Region, (2) review new and pending coal lease applications (LBA), and (3) make recommendations on new coal lease applications.

DATES: The RCT meeting will begin at 9:00 a.m. M.D.T. on Wednesday, April 23, 1997, at the Wyoming Conservation Commission Meeting Room, 777 West 1st Street, Casper, Wyoming. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Wyoming Conservation Commission's Meeting Room, 777 1st Street, Casper, Wyoming. Attendees may wish to make their room reservations before until April 11, 1997. A block of rooms has been reserved for team members and guests at the Casper Hilton Inn through April 11, 1997. For room reservations call 1–307–266–6000.

FOR FURTHER INFORMATION CONTACT: Pam Hernandez or Eugene Jonart, Wyoming State Office, Attn. (922), P.O. Box 1828, Cheyenne, Wyoming 82003; telephone (307) 775–6270 or 775–6257.

SUPPLEMENTARY INFORMATION: Primary purpose of the meeting is to discuss pending and new coal lease applications (LBA) from Evergreen Enterprises, (WYW138975), filed on May 13, 1996, for an estimated 675 million tons and 7,841 acres, and the Antelope Coal Company (WYW141435), filed February 14, 1997, for an estimated 177 million tons and 1,470 acres. This is the initial public notification of the pending applications listed above, in accordance with the Powder River Operational Guidelines (1991). Generally, a coal lease application filed under the LBA portion of BLM regulations (43 CFR 3425) takes two to four years to be processed to the competitive sale stage, depending on informational and environmental study requirements. The RCT may generate recommendation(s) for any or all of the new and pending LBAs.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY. 82003 no later than April 14, 1997, or by addressing the RCT with his/her concerns at the meeting on April 23, 1997.

The proposed agenda for the meeting follows:

1. Introduction of RCT Members and guests.

2. Approval of the Minutes of the April 23, 1996, Regional Coal Team meeting held in Cheyenne, Wyoming.

3. Regional Coal Activity Status:

a. Current Production and Trend

b. Activity Since Last RCT Meeting:

c. Status of pending LBAs previously reviewed by RCT:

—North Rochelle LBA—WYW127221, Zeigler; filed 7/22/92; 140 million tons; est. sale date July 1997. Draft EIS was reviewed by public from November 8, 1996 thru January 10, 1997. A public hearing was held in Gillette, WY, on December 12, 1996.

—Powder River—WYW136142; Peabody; filed 3/23/95, est. 550 million tons, 4,020 acres, tentative sale date in March 98

—Jacob's Ranch—WYW136458; (Wyoming), Kerr-McGee; filed 4/14/95, est. 432 million tons, 4,000 acres, tentative sale date June 98.

d. Status of Coal Exchanges—Belco/Hay Creek; Nance/Brown AVF

e. Pending Coal Lease Modifications (if any):

f. New coal lease applications (LBAs):

4. Update of Selected Portions of 1996 Executive Summary.

5. Other Regional Issues:

—Status of Buffalo Resource Area's Management Plan, (Wyoming).

—Encoal Corporation Presentation

—North American Power Group Presentation

6. Lease Applicant Presentations:

—Evergreen Enterprises

—Antelope Coal Company

7. RCT Activity Planning Recommendations

—Review and recommendation(s) on pending lease Application(s).

8. Discussion of the next meeting.

9. Adjourn.

Public discussion opportunities will be provided on all agenda items.

Alan R. Pierson,

State Director, Wyoming.

[FR Doc. 97–6579 Filed 3–17–97; 8:45 am]

BILLING CODE 4310–22–M

[ES–031–07–1430–01; MIES–033804]

Public Land Order No. 7249; Partial Revocation of Executive Order Dated July 24, 1875; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 1.70 acres of public land withdrawn for use by the U.S. Coast Guard for lighthouse purposes. The land is no longer needed for lighthouse purposes. This action will open the land to surface entry. The land has been and remains open to mineral leasing.

Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Payments Program
Office: Housing
Form Nos.: HUD-52663, 52672, 52673, and 53681.
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 34,889
Status: New
Contact: Myra Newbill, HUD, (202) 755-7707 and Robert Neal, OMB, (202) 395-7316.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 24, 1985.

Proposal: Request for Local Code Review, 24 CFR 200.295(d) (1) and (2)
Office: Housing
Form No.: None
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 12,150
Status: Revision
Contact: Mark W. Holman, HUD (202) 755-6590 and Robert Neal, OMB (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 24, 1985.

Proposal: Property Disposition Multifamily Properties, Handbook 4315.1
Office: Housing
Form Nos.: HUD-9820, 9820A, and 9733
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For Profit, and Small Businesses or Organizations
Estimated Burden Hours: 9,850
Status: Reinstatement
Contact: Richard Harrington, HUD (202) 755-7343 and Robert Neal, OMB (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 14, 1985.

Proposal: Schedule of Pooled Project Mortgage and Tandem Project Loan Pool Computation of GNMA Guaranty Fee
Office: Governmental National Mortgage Association
Form Nos.: HUD 11721 and 11745
Frequency of Submission: On Occasion
Affected Public: Business or Other For-Profit
Estimated Burden Hours: 55
Status: Revision
Contact: Patricia Gifford, HUD (202) 755-5550 and Robert Neal, OMB, (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 24, 1985.

Proposal: Schedule of Pooled Loans—Manufactured Home Loans and Issuer Certification of Pool Composition—Manufactured Home Loans
Office: Government National Mortgage Association
Form Nos. HUD-11725 and 11739
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 900
Status: Revision
Contact: Patricia Gifford, HUD, (202) 755-5550 and Robert Neal, OMB, (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 22, 1985.

Proposal: Schedule of Subscribers and GNMA II Contractual Agreement, and Schedule of Subscribers Addendum for Construction Loan Certification
Office: Government National Mortgage Association
Form Nos. HUD-11705 and 1735
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 2,155
Status: Revision
Contact: Patricia Gifford, HUD, (202) 755-5550 and Robert Neal, OMB, (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 22, 1985.

Proposal: Certification Regarding Adjustment for Damage or Neglect Pursuant to 24 CFR 203.379
Office: Housing
Form No. None
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 506
Status: New
Contact: Sally McCormick, HUD, (202) 755-6672 and Robert Neal, OMB, (202) 395-7316

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 14, 1985.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 85-3117 Filed 2-6-85; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meeting Postponement

The quarterly meeting of the Alaska Land Use Council scheduled for February 14, 1985 in Juneau, Alaska has been postponed. A new time and date for the meeting will be published in the **Federal Register** as soon as it is determined. For further information contact:

Bill Sheffield, Governor, State Cochairman
Vernon R. Wiggins, Federal Cochairman
P.O. Box 100120, Anchorage, Alaska 99510-0120, (907) 272-3422, (907) 271-5485 (FTS).

Dated: February 4, 1985.

William P. Horn,
Deputy Under Secretary.

[FR Doc. 85-3037 Filed 2-6-85; 8:45 am]
BILLING CODE 4310-10-M

Update of List of Programs Under Which States May Opt To Use E.O. 12372 Process; Intergovernmental Review of the Department of the Interior Programs and Activities

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice updates a list of programs and activities under which States may opt to use E.O. 12372, "Intergovernmental Review of Federal Programs" process. The original list appears in the **Federal Register** on June 24, 1983 (48 FR 29235). These changes are being published as a notice pursuant to the requirements of 43 CFR 9.3.

EFFECTIVE DATE: This notice shall be effective on February 7, 1985.

FOR FURTHER INFORMATION CONTACT: Office of Acquisition and Property

Management, Division of Acquisition and Grants, 18th and C Streets, NW., Washington, D.C. 20240, (202) 343-6431.

SUPPLEMENTARY INFORMATION: This updating is necessary for several reasons. The programs 15.613, "Marine Mammal Grant Program" was deleted from the 1984 Catalog of Federal Domestic Assistance because no funds had been estimated to be obligated during FY 1984. This program is therefore deleted from the "List of Programs Under Which States May Opt To Use E.O. 12372 Process."

The program 15.920, "Land Acquisition and Development of Comprehensive Management Plan (CMP)—State of New Jersey—Pinelands National Reserve" was not included in the Catalog of Federal Domestic Assistance at the time of the Federal Register notice published on June 24, 1983. This program is therefore added to the "List of Programs Under Which States May Opt To Use E.O. 12372 Process," as follows:

Catalog No.	Program name	Administrating bureau
15.920	Land Acquisition and Development of Comprehensive Management Plan (CMP)—State of New Jersey—Pinelands National Reserve.	National Park Service.

Dated: January 28, 1985.

Joseph E. Doddridge Jr.,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-3063 Filed 2-6-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[A-19279-C]

Conveyance; Arizona

January 14, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), G & F Ranch, c/o Dale Gubler, P.O. Box 7, Santa Clara, Utah 84765, has purchased by modified competative sale, at the fair market value of $5,650.00, public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 36 N., R. 10 W.,
Sec. 34 E½SW¼.
Containing 80.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-3058 Filed 2-6-85; 8:45 am]

BILLING CODE 4310-32-M

[A-19279-B]

Conveyance; Arizona

January 14, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719) Rudger C. Atkin, Inc., c/o R. Clayton Atkin, 62 South 500 East, St. George, Utah 84770, has purchased by direct sale, at the fair market value of $2,650.00, public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 36 N., R. 10 W.,
Sec. 14 NE¼NE¼.
Containing 40.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and, Minerals Operations.

[FR Doc. 85-3059 Filed 2-6-85; 8:45 am]

BILLING CODE 4310-32-M

[M-63185 through 63197; M-59763]

Conveyance of Public Lands; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Conveyance of Public Lands in Meagher, Cascade, Judith Basin and Blaine Counties, MT.

SUMMARY: Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following tracts were conveyed out of federal ownership.

Principal Meridian, Montana

T. 14 N., R. 1 E.,
Sec. 24, N½NE¼.
T. 13 N., R. 2 E.,
Sec. 20, N½NE¼.
T. 12 N., R. 3 E.,
Sec. 6, SE¼NE¼.
T. 9 N., R. 4 E.,
Sec. 12, S½S½SE¼SW¼, S½S½SW¼SE¼.
T. 8 N., R. 5 E.,
Sec. 2, lot 3 and SW¼SW¼.
T. 12 N., R. 5 E.,
Sec. 6, lot 3, SE¼NE¼, NE¼SW¼ and NE¼SE¼;
Sec. 10, lots 1, 2, 9 and 10.
T. 13 N., R. 5 E.,
Sec. 32, NE¼NE¼ and SE¼SE¼.
T. 17 N., R. 6 E.,
Sec. 35, SW¼NE¼.
T. 8 N., R. 7 E.,
Sec. 32, NE¼NE¼ and SW¼SE¼.
T. 10 N., R. 8 E.,
Sec. 4, lot 1 and NW¼SW¼.
T. 6 N., R. 9 E.,
Sec. 4, lot 4.
T. 10 N., R. 9 E.,
Sec. 19, lot 5;
Sec. 28, lots 3 through 7;
Sec. 29, lots 2 through 6, 11, 12 and 14 through 21.
T. 8 N., R. 10 E.,
Sec. 12, SE¼SW¼;
Sec. 24, NE¼NE¼ and SE¼NW¼.
T. 7 N., R. 11 E.,
Sec. 6, lot 7.
T. 10 N., R. 11 E.,
Sec. 14, NE¼SW¼;
Sec. 21, lots 1 and 6;
Sec. 22, lots 1, 3 and 4;
Sec. 23, lot 3.
T. 12 N., R. 12 E.,
Sec. 1, lots 1 and 4, E½SW¼.
T. 13 N., R. 12 E.,
Sec. 11, W½NW¼;
Sec. 15, N½NW¼;
Sec. 25, SE¼SE¼.
T. 12 N., R. 13 E.,
Sec. 3, SW¼NW¼ and NW¼SE¼;
Sec. 6, lot 5;
Sec. 17, SW¼SE¼.
T. 13 N., R. 13 E.,
Sec. 8, E½NW¼;
Sec. 17, W½NW¼;
Sec. 18, NW¼NE¼;
Sec. 20, SW¼NW¼;
Sec. 30, NE¼NW¼;
Sec. 33, SW¼NE¼.
T. 14 N., R. 13 E.,
Sec. 31, SW¼SE¼.
T. 29 N., R. 19 E.,
Sec. 15, SW¼SW¼.
T. 17 N., R. 3 W.,
Sec. 18, lot 2;
Sec. 30, SW¼SE¼.
Aggregating 2,539.47 acres.

In exchange for the above land, the United States acquired the following described land in Teton County, Montana:

Principal Meridian, Montana

T. 24 N., R. 8 W.,
Sec. 5, That part of lot 1 described as follows: beginning at the northeast corner of section 5, thence due West along the township line a distance of 900 feet, thence South 200 feet, thence East 500 feet, thence South 1061.9 feet to the south line of said lot 1, thence East 400 feet to the east line of said lot 1, thence North 1261.9 feet to the point of beginning; and lots 5, 6, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼ and NW¼SE¼;
Sec. 6, NE¼NE¼NE¼SW¼, S½NE¼NE¼SW¼, SE¼NE¼SW¼, SE¼SW¼ and SE¼;
Sec. 7, lots 1 and 2, NE¼, E½NW¼;
Sec. 8, W½NW¼.
Aggregating 944.87 acres.

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

Presidential Documents

Title 3—

The President

Executive Order 12898 of February 11, 1994

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1–1.*Implementation.*

1–101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1–102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency (''Administrator'') or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice (''Working Group''). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1–103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3–3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5–502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1–103. *Development of Agency Strategies.* (a) Except as provided in section 6–605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1–104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1–103(e) of this order.

Sec. 2–2. *Federal Agency Responsibilities for Federal Programs.* Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3–3. *Research, Data Collection, and Analysis.*

3–301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3–302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001–11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4–4. *Subsistence Consumption of Fish and Wildlife.*

4–401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4–402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or

wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5–5. *Public Participation and Access to Information.* (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6–6. *General Provisions.*

6–601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6–602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6–603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6–604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6–605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

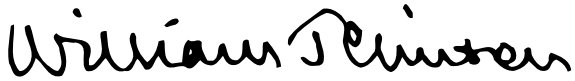
6–606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6–607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6–608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6–609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance

of the United States, its agencies, its officers, or any other person with this order.



THE WHITE HOUSE,
February 11, 1994.

[FR Citation 59 FR 7629]

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) ''Federal lands'' means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103–454, 108 Stat. 4791, and ''Indian'' refers to a member of such an Indian tribe; and

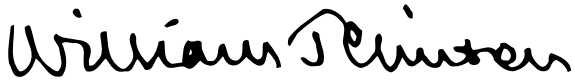
(iii) ''Sacred site'' means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments.''

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, ''agency action'' has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.



THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96–13597
Filed 5–27–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13112 of February 3, 1999

Invasive Species

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. *Definitions.*

(a) ''Alien species'' means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) ''Control'' means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) ''Ecosystem'' means the complex of a community of organisms and its environment.

(d) ''Federal agency'' means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) ''Introduction'' means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) ''Invasive species'' means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) ''Native species'' means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) ''Species'' means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) ''Stakeholders'' means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) ''United States'' means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Sec. 2. *Federal Agency Duties.* (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Sec. 3. *Invasive Species Council.* (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Sec. 4. *Duties of the Invasive Species Council.* The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Sec. 5. *Invasive Species Management Plan.* (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no

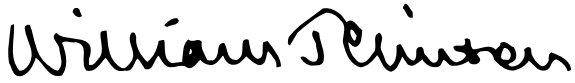
less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Sec. 6. *Judicial Review and Administration.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.



THE WHITE HOUSE,
February 3, 1999.

[FR Doc. 99–3184
Filed 2–5–99; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ''Tribal officials'' means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

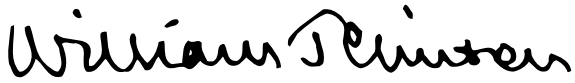
Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.



THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003
Filed 11–8–00; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 66, No. 11
Wednesday, January 17, 2001

Presidential Documents

Title 3—

The President

Executive Order 13186 of January 10, 2001

Responsibilities of Federal Agencies To Protect Migratory Birds

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (16 U.S.C. 703–711), the Bald and Golden Eagle Protection Acts (16 U.S.C. 668–668d), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and other pertinent statutes, it is hereby ordered as follows:

Section 1. *Policy.* Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936, the Convention for the Protection of Birds and Their Environment- Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978.

These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs executive departments and agencies to take certain actions to further implement the Act.

Sec. 2. *Definitions.* For purposes of this order:

(a) ''Take'' means take as defined in 50 C.F.R. 10.12, and includes both ''intentional'' and ''unintentional'' take.

(b) ''Intentional take'' means take that is the purpose of the activity in question.

(c) ''Unintentional take'' means take that results from, but is not the purpose of, the activity in question.

(d) ''Migratory bird'' means any bird listed in 50 C.F.R. 10.13.

(e) ''Migratory bird resources'' means migratory birds and the habitats upon which they depend.

(f) ''Migratory bird convention'' means, collectively, the bilateral conventions (with Great Britain/Canada, Mexico, Japan, and Russia) for the conservation of migratory bird resources.

(g) ''Federal agency'' means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(h) ''Action'' means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency will further define what the term ''action'' means with respect to its own authorities and what programs should be included

in the agency-specific Memoranda of Understanding required by this order. Actions delegated to or assumed by nonfederal entities, or carried out by nonfederal entities with Federal assistance, are not subject to this order. Such actions, however, continue to be subject to the Migratory Bird Treaty Act.

(i) ''Species of concern'' refers to those species listed in the periodic report ''Migratory Nongame Birds of Management Concern in the United States,'' priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11.

Sec. 3. *Federal Agency Responsibilities.* (a) Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.

(b) In coordination with affected Federal agencies, the Service shall develop a schedule for completion of the MOUs within 180 days of the date of this order. The schedule shall give priority to completing the MOUs with agencies having the most substantive impacts on migratory birds.

(c) Each MOU shall establish protocols for implementation of the MOU and for reporting accomplishments. These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency's formal planning processes (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate. This order and the MOUs to be developed by the agencies are intended to be implemented when new actions or renewal of contracts, permits, delegations, or other third party agreements are initiated as well as during the initiation of new, or revisions to, land management plans.

(d) Each MOU shall include an elevation process to resolve any dispute between the signatory agencies regarding a particular practice or activity.

(e) Pursuant to its MOU, each agency shall, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

(2) restore and enhance the habitat of migratory birds, as practicable;

(3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;

(4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;

(5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural

Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;

(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;

(7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;

(8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;

(9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;

(10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such data (e.g, the Cornell Laboratory of Ornithology);

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and

(15) develop partnerships with non-Federal entities to further bird conservation.

(f) Notwithstanding the requirement to finalize an MOU within 2 years, each agency is encouraged to immediately begin implementing the conservation measures set forth above in subparagraphs (1) through (15) of this section, as appropriate and practicable.

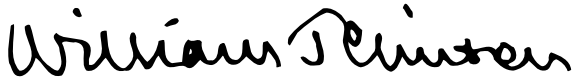
(g) Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.

Sec. 4. *Council for the Conservation of Migratory Birds.* (a) The Secretary of Interior shall establish an interagency Council for the Conservation of Migratory Birds (Council) to oversee the implementation of this order. The Council's duties shall include the following: (1) sharing the latest resource information to assist in the conservation and management of migratory birds; (2) developing an annual report of accomplishments and recommendations related to this order; (3) fostering partnerships to further the goals of this order; and (4) selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

(b) The Council shall include representation, at the bureau director/administrator level, from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Energy, Defense, and the Environmental Protection Agency and from such other agencies as appropriate.

Sec. 5. *Application and Judicial Review.* (a) This order and the MOU to be developed by the agencies do not require changes to current contracts, permits, or other third party agreements.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
January 10, 2001.

[FR Doc. 01–1387
Filed 1–12–01; 8:45 am]
Billing code 3195–01–P

For Immediate Release
Office of the Press Secretary
August 26, 2004

Executive Order Facilitation of Cooperative Conservation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

Sec. 2. Definition. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

Sec. 3. Federal Activities. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. White House Conference on Cooperative Conservation. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their

individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. General Provision. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH

THE WHITE HOUSE,

August 26, 2004.

# # #

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 5, 2009

EXECUTIVE ORDER

- - - - - - -

FEDERAL LEADERSHIP IN ENVIRONMENTAL, ENERGY, AND ECONOMIC PERFORMANCE

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to establish an integrated strategy towards sustainability in the Federal Government and to make reduction of greenhouse gas emissions a priority for Federal agencies, it is hereby ordered as follows:

Section 1. Policy. In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, the Federal Government must lead by example. It is therefore the policy of the United States that Federal agencies shall increase energy efficiency; measure, report, and reduce their greenhouse gas emissions from direct and indirect activities; conserve and protect water resources through efficiency, reuse, and stormwater management; eliminate waste, recycle, and prevent pollution; leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services; design, construct, maintain, and operate high performance sustainable buildings in sustainable locations; strengthen the vitality and livability of the communities in which Federal facilities are located; and inform Federal employees about and involve them in the achievement of these goals.

It is further the policy of the United States that to achieve these goals and support their respective missions, agencies shall prioritize actions based on a full accounting of both economic and social benefits and costs and shall drive continuous improvement by annually evaluating performance, extending or expanding projects that have net benefits, and reassessing or discontinuing under-performing projects.

Finally, it is also the policy of the United States that agencies' efforts and outcomes in implementing this order shall be transparent and that agencies shall therefore disclose results associated with the actions taken pursuant to this order on publicly available Federal websites.

Sec. 2. Goals for Agencies. In implementing the policy set forth in section 1 of this order, and preparing and implementing the Strategic Sustainability Performance Plan called for in section 8 of this order, the head of each agency shall:

(a) within 90 days of the date of this order, establish and report to the Chair of the Council on Environmental Quality (CEQ Chair) and the Director of the Office of Management and Budget (OMB Director) a percentage reduction target for agency-wide

reductions of scope 1 and 2 greenhouse gas emissions in absolute terms by fiscal year 2020, relative to a fiscal year 2008 baseline of the agency's scope 1 and 2 greenhouse gas emissions. Where appropriate, the target shall exclude direct emissions from excluded vehicles and equipment and from electric power produced and sold commercially to other parties in the course of regular business. This target shall be subject to review and approval by the CEQ Chair in consultation with the OMB Director under section 5 of this order. In establishing the target, the agency head shall consider reductions associated with:

(i) reducing energy intensity in agency buildings;

(ii) increasing agency use of renewable energy and implementing renewable energy generation projects on agency property; and

(iii) reducing the use of fossil fuels by:

(A) using low greenhouse gas emitting vehicles including alternative fuel vehicles;

(B) optimizing the number of vehicles in the agency fleet; and

(C) reducing, if the agency operates a fleet of at least 20 motor vehicles, the agency fleet's total consumption of petroleum products by a minimum of 2 percent annually through the end of fiscal year 2020, relative to a baseline of fiscal year 2005;

(b) within 240 days of the date of this order and concurrent with submission of the Strategic Sustainability Performance Plan as described in section 8 of this order, establish and report to the CEQ Chair and the OMB Director a percentage reduction target for reducing agency-wide scope 3 greenhouse gas emissions in absolute terms by fiscal year 2020, relative to a fiscal year 2008 baseline of agency scope 3 emissions. This target shall be subject to review and approval by the CEQ Chair in consultation with the OMB Director under section 5 of this order. In establishing the target, the agency head shall consider reductions associated with:

(i) pursuing opportunities with vendors and contractors to address and incorporate incentives to reduce greenhouse gas emissions (such as changes to manufacturing, utility or delivery services, modes of transportation used, or other changes in supply chain activities);

(ii) implementing strategies and accommodations for transit, travel, training, and conferencing that actively support lower-carbon commuting and travel by agency staff;

(iii) greenhouse gas emission reductions associated with pursuing other relevant goals in this section; and

(iv) developing and implementing innovative policies and practices to address scope 3 greenhouse gas emissions unique to agency operations;

(c) establish and report to the CEQ Chair and OMB Director a comprehensive inventory of absolute greenhouse gas emissions, including scope 1, scope 2, and specified scope 3 emissions (i) within 15 months of the date of this order for fiscal year 2010, and (ii) thereafter, annually at the end of January, for the preceding fiscal year.

(d) improve water use efficiency and management by:

(i) reducing potable water consumption intensity by 2 percent annually through fiscal year 2020, or 26 percent by the end of fiscal year 2020, relative to a baseline of the agency's water consumption in fiscal year 2007, by implementing water management strategies including water-efficient and low-flow fixtures and efficient cooling towers;

(ii) reducing agency industrial, landscaping, and agricultural water consumption by 2 percent annually or 20 percent by the end of fiscal year 2020 relative to a baseline of the agency's industrial, landscaping, and agricultural water consumption in fiscal year 2010;

(iii) consistent with State law, identifying, promoting, and implementing water reuse strategies that reduce potable water consumption; and

(iv) implementing and achieving the objectives identified in the stormwater management guidance referenced in section 14 of this order;

(e) promote pollution prevention and eliminate waste by:

(i) minimizing the generation of waste and pollutants through source reduction;

(ii) diverting at least 50 percent of non-hazardous solid waste, excluding construction and demolition debris, by the end of fiscal year 2015;

(iii) diverting at least 50 percent of construction and demolition materials and debris by the end of fiscal year 2015;

(iv) reducing printing paper use and acquiring uncoated printing and writing paper containing at least 30 percent postconsumer fiber;

(v) reducing and minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of;

(vi) increasing diversion of compostable and organic material from the waste stream;

(vii) implementing integrated pest management and other appropriate landscape management practices;

(viii) increasing agency use of acceptable alternative chemicals and processes in keeping with the agency's procurement policies;

(ix) decreasing agency use of chemicals where such decrease will assist the agency in achieving greenhouse gas emission reduction targets under section 2(a) and (b) of this order; and

(x) reporting in accordance with the requirements of sections 301 through 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 *et seq.*);

(f) advance regional and local integrated planning by:

(i) participating in regional transportation planning and recognizing existing community transportation infrastructure;

(ii) aligning Federal policies to increase the effectiveness of local planning for energy choices such as locally generated renewable energy;

(iii) ensuring that planning for new Federal facilities or new leases includes consideration of sites that are pedestrian friendly, near existing employment centers, and accessible to public transit, and emphasizes existing central cities and, in rural communities, existing or planned town centers;

(iv) identifying and analyzing impacts from energy usage and alternative energy sources in all Environmental Impact Statements and Environmental Assessments for proposals for new or expanded Federal facilities under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); and

(v) coordinating with regional programs for Federal, State, tribal, and local ecosystem, watershed, and environmental management;

(g) implement high performance sustainable Federal building design, construction, operation and management, maintenance, and deconstruction including by:

(i) beginning in 2020 and thereafter, ensuring that all new Federal buildings that enter the planning process are designed to achieve zero-net-energy by 2030;

(ii) ensuring that all new construction, major renovation, or repair and alteration of Federal buildings complies with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* (Guiding Principles);

(iii) ensuring that at least 15 percent of the agency's existing buildings (above 5,000 gross square feet) and building leases (above 5,000

gross square feet) meet the Guiding Principles by fiscal year 2015 and that the agency makes annual progress toward 100-percent conformance with the Guiding Principles for its building inventory;

(iv) pursuing cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;

(v) managing existing building systems to reduce the consumption of energy, water, and materials, and identifying alternatives to renovation that reduce existing assets' deferred maintenance costs;

(vi) when adding assets to the agency's real property inventory, identifying opportunities to consolidate and dispose of existing assets, optimize the performance of the agency's real-property portfolio, and reduce associated environmental impacts; and

(vii) ensuring that rehabilitation of federally owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings;

(h) advance sustainable acquisition to ensure that 95 percent of new contract actions including task and delivery orders, for products and services with the exception of acquisition of weapon systems, are energy-efficient (Energy Star or Federal Energy Management Program (FEMP) designated), water-efficient, biobased, environmentally preferable (e.g., Electronic Product Environmental Assessment Tool (EPEAT) certified), non-ozone depleting, contain recycled content, or are non-toxic or less-toxic alternatives, where such products and services meet agency performance requirements;

(i) promote electronics stewardship, in particular by:

(i) ensuring procurement preference for EPEAT-registered electronic products;

(ii) establishing and implementing policies to enable power management, duplex printing, and other energy-efficient or environmentally preferable features on all eligible agency electronic products;

(iii) employing environmentally sound practices with respect to the agency's disposition of all agency excess or surplus electronic products;

(iv) ensuring the procurement of Energy Star and FEMP designated electronic equipment;

(v) implementing best management practices for energy-efficient management of servers and Federal data centers; and

(j) sustain environmental management, including by:

(i) continuing implementation of formal environmental management systems at all appropriate organizational levels; and

(ii) ensuring these formal systems are appropriately implemented and maintained to achieve the performance necessary to meet the goals of this order.

Sec. 3. Steering Committee on Federal Sustainability. The OMB Director and the CEQ Chair shall:

(a) establish an interagency Steering Committee (Steering Committee) on Federal Sustainability composed of the Federal Environmental Executive, designated under section 6 of Executive Order 13423 of January 24, 2007, and Agency Senior Sustainability Officers, designated under section 7 of this order, and that shall:

(i) serve in the dual capacity of the Steering Committee on Strengthening Federal Environmental, Energy, and Transportation Management designated by the CEQ Chair pursuant to section 4 of Executive Order 13423;

(ii) advise the OMB Director and the CEQ Chair on implementation of this order;

(iii) facilitate the implementation of each agency's Strategic Sustainability Performance Plan; and

(iv) share information and promote progress towards the goals of this order;

(b) enlist the support of other organizations within the Federal Government to assist the Steering Committee in addressing the goals of this order;

(c) establish and disband, as appropriate, interagency subcommittees of the Steering Committee, to assist the Steering Committee in carrying out its responsibilities;

(d) determine appropriate Federal actions to achieve the policy of section 1 and the goals of section 2 of this order;

(e) ensure that Federal agencies are held accountable for conformance with the requirements of this order; and

(f) in coordination with the Department of Energy's Federal Energy Management Program and the Office of the Federal Environmental Executive designated under section 6 of Executive Order 13423, provide guidance and assistance to facilitate the development of agency targets for greenhouse gas emission reductions required under subsections 2(a) and (b) of this order.

Sec. 4. Additional Duties of the Director of the Office of Management and Budget. In addition to the duties of the OMB Director specified elsewhere in this order, the OMB Director shall:

(a) review and approve each agency's multi-year Strategic Sustainability Performance Plan under section 8 of this order and each update of the Plan. The Director shall, where feasible, review each agency's Plan concurrently with OMB's review and evaluation of the agency's budget request;

(b) prepare scorecards providing periodic evaluation of Federal agency performance in implementing this order and publish scorecard results on a publicly available website; and

(c) approve and issue instructions to the heads of agencies concerning budget and appropriations matters relating to implementation of this order.

Sec. 5. Additional Duties of the Chair of the Council on Environmental Quality. In addition to the duties of the CEQ Chair specified elsewhere in this order, the CEQ Chair shall:

(a) issue guidance for greenhouse gas accounting and reporting required under section 2 of this order;

(b) issue instructions to implement this order, in addition to instructions within the authority of the OMB Director to issue under subsection 4(c) of this order;

(c) review and approve each agency's targets, in consultation with the OMB Director, for agency-wide reductions of greenhouse gas emissions under section 2 of this order;

(d) prepare, in coordination with the OMB Director, streamlined reporting metrics to determine each agency's progress under section 2 of this order;

(e) review and evaluate each agency's multi-year Strategic Sustainability Performance Plan under section 8 of this order and each update of the Plan;

(f) assess agency progress toward achieving the goals and policies of this order, and provide its assessment of the agency's progress to the OMB Director;

(g) within 120 days of the date of this order, provide the President with an aggregate Federal Government-wide target for reducing scope 1 and 2 greenhouse gas emissions in absolute terms by fiscal year 2020 relative to a fiscal year 2008 baseline;

(h) within 270 days of the date of this order, provide the President with an aggregate Federal Government-wide target for reducing scope 3 greenhouse gas emissions in absolute terms by fiscal year 2020 relative to a fiscal year 2008 baseline;

(i) establish and disband, as appropriate, interagency working groups to provide recommendations to the CEQ for areas of Federal agency operational and managerial improvement associated with the goals of this order; and

(j) administer the Presidential leadership awards program, established under subsection 4(c) of Executive Order 13423, to recognize exceptional and outstanding agency performance with respect to achieving the goals of this order and to recognize extraordinary innovation, technologies, and practices employed to achieve the goals of this order.

Sec. 6. Duties of the Federal Environmental Executive. The Federal Environmental Executive designated by the President to head the Office of the Federal Environmental Executive, pursuant to section 6 of Executive Order 13423, shall:

(a) identify strategies and tools to assist Federal implementation efforts under this order, including through the sharing of best practices from successful Federal sustainability efforts; and

(b) monitor and advise the CEQ Chair and the OMB Director on the agencies' implementation of this order and their progress in achieving the order's policies and goals.

Sec. 7. Agency Senior Sustainability Officers. (a) Within 30 days of the date of this order, the head of each agency shall designate from among the agency's senior management officials a Senior Sustainability Officer who shall be accountable for agency conformance with the requirements of this order; and shall report such designation to the OMB Director and the CEQ Chair.

(b) The Senior Sustainability Officer for each agency shall perform the functions of the senior agency official designated by the head of each agency pursuant to section 3(d)(i) of Executive Order 13423 and shall be responsible for:

(i) preparing the targets for agency-wide reductions and the inventory of greenhouse gas emissions required under subsections 2(a), (b), and (c) of this order;

(ii) within 240 days of the date of this order, and annually thereafter, preparing and submitting to the CEQ Chair and the OMB Director, for their review and approval, a multi-year Strategic Sustainability Performance Plan (Sustainability Plan or Plan) as described in section 8 of this order;

(iii) preparing and implementing the approved Plan in coordination with appropriate offices and organizations within the agency including the General Counsel, Chief Information Officer, Chief Acquisition Officer, Chief Financial Officer, and Senior Real Property Officers, and in coordination with other agency plans, policies, and activities;

(iv) monitoring the agency's performance and progress in implementing the Plan, and reporting the performance and progress to the CEQ Chair and the OMB Director, on such schedule and in such format as the Chair and the Director may require; and

(v) reporting annually to the head of the agency on the adequacy and effectiveness of the agency's Plan in implementing this order.

Sec. 8. Agency Strategic Sustainability Performance Plan. Each agency shall develop, implement, and annually update an integrated Strategic Sustainability Performance Plan that will prioritize agency actions based on lifecycle return

on investment. Each agency Plan and update shall be subject to approval by the OMB Director under section 4 of this order. With respect to the period beginning in fiscal year 2011 and continuing through the end of fiscal year 2021, each agency Plan shall:

(a) include a policy statement committing the agency to compliance with environmental and energy statutes, regulations, and Executive Orders;

(b) achieve the sustainability goals and targets, including greenhouse gas reduction targets, established under section 2 of this order;

(c) be integrated into the agency's strategic planning and budget process, including the agency's strategic plan under section 3 of the Government Performance and Results Act of 1993, as amended (5 U.S.C. 306);

(d) identify agency activities, policies, plans, procedures, and practices that are relevant to the agency's implementation of this order, and where necessary, provide for development and implementation of new or revised policies, plans, procedures, and practices;

(e) identify specific agency goals, a schedule, milestones, and approaches for achieving results, and quantifiable metrics for agency implementation of this order;

(f) take into consideration environmental measures as well as economic and social benefits and costs in evaluating projects and activities based on lifecycle return on investment;

(g) outline planned actions to provide information about agency progress and performance with respect to achieving the goals of this order on a publicly available Federal website;

(h) incorporate actions for achieving progress metrics identified by the OMB Director and the CEQ Chair;

(i) evaluate agency climate-change risks and vulnerabilities to manage the effects of climate change on the agency's operations and mission in both the short and long term; and

(j) identify in annual updates opportunities for improvement and evaluation of past performance in order to extend or expand projects that have net lifecycle benefits, and reassess or discontinue under-performing projects.

Sec. 9. Recommendations for Greenhouse Gas Accounting and Reporting. The Department of Energy, through its Federal Energy Management Program, and in coordination with the Environmental Protection Agency, the Department of Defense, the General Services Administration, the Department of the Interior, the Department of Commerce, and other agencies as appropriate, shall:

(a) within 180 days of the date of this order develop and provide to the CEQ Chair recommended Federal greenhouse gas reporting and accounting procedures for agencies to use in carrying out their obligations under subsections 2(a), (b), and (c) of this order, including procedures that will ensure that agencies:

(i) accurately and consistently quantify and account for greenhouse gas emissions from all scope 1, 2, and 3 sources, using accepted greenhouse gas accounting and reporting principles, and identify appropriate opportunities to revise the fiscal year 2008 baseline to address significant changes in factors affecting agency emissions such as reorganization and improvements in accuracy of data collection and estimation procedures or other major changes that would otherwise render the initial baseline information unsuitable;

(ii) consider past Federal agency efforts to reduce greenhouse gas emissions; and

(iii) consider and account for sequestration and emissions of greenhouse gases resulting from Federal land management practices;

(b) within 1 year of the date of this order, to ensure consistent and accurate reporting under this section, provide electronic accounting and reporting capability for the Federal greenhouse gas reporting procedures developed under subsection (a) of this section, and to the extent practicable, ensure compatibility between this capability and existing Federal agency reporting systems; and

(c) every 3 years from the date of the CEQ Chair's issuance of the initial version of the reporting guidance, and as otherwise necessary, develop and provide recommendations to the CEQ Chair for revised Federal greenhouse gas reporting procedures for agencies to use in implementing subsections 2(a), (b), and (c) of this order.

Sec. 10. Recommendations for Sustainable Locations for Federal Facilities. Within 180 days of the date of this order, the Department of Transportation, in accordance with its Sustainable Partnership Agreement with the Department of Housing and Urban Development and the Environmental Protection Agency, and in coordination with the General Services Administration, the Department of Homeland Security, the Department of Defense, and other agencies as appropriate, shall:

(a) review existing policies and practices associated with site selection for Federal facilities; and

(b) provide recommendations to the CEQ Chair regarding sustainable location strategies for consideration in Sustainability Plans. The recommendations shall be consistent with principles of sustainable development including prioritizing central business district and rural town center locations, prioritizing sites well served by transit, including site design elements that ensure safe and convenient pedestrian access, consideration of transit access and proximity to housing affordable to a wide range of Federal employees, adaptive reuse or renovation of buildings, avoidance of development of sensitive land resources, and evaluation of parking management strategies.

Sec. 11. Recommendations for Federal Local Transportation Logistics. Within 180 days of the date of this order, the General Services Administration, in coordination with the Department of Transportation, the Department of the Treasury, the Department of Energy, the Office of Personnel Management,

and other agencies as appropriate, shall review current policies and practices associated with use of public transportation by Federal personnel, Federal shuttle bus and vehicle transportation routes supported by multiple Federal agencies, and use of alternative fuel vehicles in Federal shuttle bus fleets, and shall provide recommendations to the CEQ Chair on how these policies and practices could be revised to support the implementation of this order and the achievement of its policies and goals.

Sec. 12. Guidance for Federal Fleet Management. Within 180 days of the date of this order, the Department of Energy, in coordination with the General Services Administration, shall issue guidance on Federal fleet management that addresses the acquisition of alternative fuel vehicles and use of alternative fuels; the use of biodiesel blends in diesel vehicles; the acquisition of electric vehicles for appropriate functions; improvement of fleet fuel economy; the optimizing of fleets to the agency mission; petroleum reduction strategies, such as the acquisition of low greenhouse gas emitting vehicles and the reduction of vehicle miles traveled; and the installation of renewable fuel pumps at Federal fleet fueling centers.

Sec. 13. Recommendations for Vendor and Contractor Emissions. Within 180 days of the date of this order, the General Services Administration, in coordination with the Department of Defense, the Environmental Protection Agency, and other agencies as appropriate, shall review and provide recommendations to the CEQ Chair and the Administrator of OMB's Office of Federal Procurement Policy regarding the feasibility of working with the Federal vendor and contractor community to provide information that will assist Federal agencies in tracking and reducing scope 3 greenhouse gas emissions related to the supply of products and services to the Government. These recommendations should consider the potential impacts on the procurement process, and the Federal vendor and contractor community including small businesses and other socioeconomic procurement programs. Recommendations should also explore the feasibility of:

(a) requiring vendors and contractors to register with a voluntary registry or organization for reporting greenhouse gas emissions;

(b) requiring contractors, as part of a new or revised registration under the Central Contractor Registration or other tracking system, to develop and make available its greenhouse gas inventory and description of efforts to mitigate greenhouse gas emissions;

(c) using Federal Government purchasing preferences or other incentives for products manufactured using processes that minimize greenhouse gas emissions; and

(d) other options for encouraging sustainable practices and reducing greenhouse gas emissions.

Sec. 14. Stormwater Guidance for Federal Facilities. Within 60 days of the date of this order, the Environmental Protection Agency, in coordination with other Federal agencies as appropriate, shall issue guidance on the implementation of section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17094).

Sec. 15. Regional Coordination. Within 180 days of the date of this order, the Federal Environmental Executive shall develop and implement a regional implementation plan to support the goals of this order taking into account energy and environmental priorities of particular regions of the United States.

Sec. 16. Agency Roles in Support of Federal Adaptation Strategy. In addition to other roles and responsibilities of agencies with respect to environmental leadership as specified in this order, the agencies shall participate actively in the interagency Climate Change Adaptation Task Force, which is already engaged in developing the domestic and international dimensions of a U.S. strategy for adaptation to climate change, and shall develop approaches through which the policies and practices of the agencies can be made compatible with and reinforce that strategy. Within 1 year of the date of this order the CEQ Chair shall provide to the President, following consultation with the agencies and the Climate Change Adaptation Task Force, as appropriate, a progress report on agency actions in support of the national adaptation strategy and recommendations for any further such measures as the CEQ Chair may deem necessary.

Sec. 17. Limitations. (a) This order shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this order shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policy set forth in section 1 of this order to the extent the head of the agency determines practicable.

Sec. 18. Exemption Authority.

(a) The Director of National Intelligence may exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 20, to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt law enforcement activities of that agency, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 20, to the extent the head of an agency determines necessary to protect undercover operations from unauthorized disclosure.

(c) (i) The head of an agency may exempt law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency from the provisions of this order, other than this subsection and section 20.

(ii) Heads of agencies shall manage fleets to which paragraph (i) of this subsection refers in a manner consistent with the policy set forth in section 1 of this order to the extent they determine practicable.

(d) The head of an agency may exempt particular agency activities and facilities from the provisions of this order, other than this subsection and section 20, where it is in the interest of national security. If the head of an agency issues an exemption under this section, the agency must notify the CEQ Chair in writing within 30 days of issuance of the exemption under this subsection. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order.

(e) The head of an agency may submit to the President, through the CEQ Chair, a request for an exemption of an agency activity, and related personnel, resources, and facilities, from this order.

Sec. 19. Definitions. As used in this order:

(a) "absolute greenhouse gas emissions" means total greenhouse gas emissions without normalization for activity levels and includes any allowable consideration of sequestration;

(b) "agency" means an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office;

(c) "alternative fuel vehicle" means vehicles defined by section 301 of the Energy Policy Act of 1992, as amended (42 U.S.C. 13211), and otherwise includes electric fueled vehicles, hybrid electric vehicles, plug-in hybrid electric vehicles, dedicated alternative fuel vehicles, dual fueled alternative fuel vehicles, qualified fuel cell motor vehicles, advanced lean burn technology motor vehicles, self-propelled vehicles such as bicycles and any other alternative fuel vehicles that are defined by statute;

(d) "construction and demolition materials and debris" means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure;

(e) "divert" and "diverting" means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities;

(f) "energy intensity" means energy consumption per square foot of building space, including industrial or laboratory facilities;

(g) "environmental" means environmental aspects of internal agency operations and activities, including those aspects related to energy and transportation functions;

(h) "excluded vehicles and equipment" means any vehicle, vessel, aircraft, or non-road equipment owned or operated by an agency of the Federal Government that is used in:

(i) combat support, combat service support, tactical or relief operations, or training for such operations;

(ii) Federal law enforcement (including protective service and investigation);

(iii) emergency response (including fire and rescue); or

(iv) spaceflight vehicles (including associated ground-support equipment);

(i) "greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

(j) "renewable energy" means energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project;

(k) "scope 1, 2, and 3" mean;

(i) scope 1: direct greenhouse gas emissions from sources that are owned or controlled by the Federal agency;

(ii) scope 2: direct greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by a Federal agency; and

(iii) scope 3: greenhouse gas emissions from sources not owned or directly controlled by a Federal agency but related to agency activities such as vendor supply chains, delivery services, and employee travel and commuting;

(l) "sustainability" and "sustainable" mean to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations;

(m) "United States" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands, and associated territorial waters and airspace;

(n) "water consumption intensity" means water consumption per square foot of building space; and

(o) "zero-net-energy building" means a building that is designed, constructed, and operated to require a greatly reduced quantity of energy to operate, meet the balance of energy needs from sources of energy that do not produce greenhouse gases, and therefore result in no net emissions of greenhouse gases and be economically viable.

Sec. 20. General Provisions.

(a) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the OMB Director relating to budgetary, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,
October 5, 2009.

# # #