

## § 930.99

pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the inter-governmental review process, otherwise the State agency waives its right to object to the proposed activity.

### **§ 930.99 Availability of mediation for federal assistance disputes.**

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

### **§ 930.100 Remedial action for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later main-

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tains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinstate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection

and to submit comments for the Director's consideration.

**§ 930.101 Supplemental coordination for proposed activities.**

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

**Subpart G—Secretarial Mediation**

**§ 930.110 Objectives.**

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

**§ 930.111 OCRM mediation.**

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

**§ 930.112 Request for Secretarial mediation.**

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.