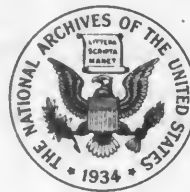


Registered
Federal
Order

MONDAY, JANUARY 15, 1979
PART IV



**DEPARTMENT OF
COMMERCE**

**National Oceanic and
Atmospheric
Administration**

**IMPLEMENTATION OF
THE COASTAL ENERGY
IMPACT PROGRAM**

**Proposed Administrative
Procedures Regarding Grants and
Credit Assistance**

[3510-08-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[15 CFR Part 931]

COASTAL ENERGY IMPACT PROGRAM

Proposed Administrative Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations described administrative procedures to implement the Coastal Energy Impact Program, which will provide grants and credit assistance to coastal States and communities to help them deal with the impacts of coastal energy development.

DATE: March 3, 1979 deadline for submission of written comments.

FOR FURTHER INFORMATION CONTACT:

James B. Robey or Dan Hoydysh, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235, 202-634-4128.

SUPPLEMENTARY INFORMATION:

I. EXPLANATORY STATEMENT

The Coastal Energy Impact Program (CEIP) was created by the 1976 amendments to the Coastal Zone Management Act of 1972 (Pub. L. 94-370; 16 U.S.C.A. 1451, et seq.) and signed into law on July 26, 1976. The National Oceanic and Atmospheric Administration (NOAA) published proposed regulations on October 22, 1976 (41 FR 46724), interim-final regulations (42 FR 1164) on January 5, 1977, and final regulations (43 FR 7545) on February 23, 1978. The preamble to these regulations discussed the implementation of the CEIP in detail as well as issues raised and comments made during various comment periods.

On September 18, 1978, the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA) (Pub. L. 95-372) were signed into law significantly amending the CEIP as follows:

The authorization level for section 308(b) formula grants was raised from 50 million to 130 million dollars per fiscal year and the authorization period for these grants was extended from September 30, 1984 to September 30, 1988. The formula used to allot funds appropriated for formula grants was modified—the Outer Continental Shelf (OCS) energy activity related *new employment* factor was deleted and the weight given the remaining formula factors was modified. A ceiling

of 37.5% of the total amount appropriated was established as a limit on how much any State may receive under section 308(b) in a given fiscal year. A floor of two percent of the total amount appropriated was established as a minimum that a State faced with impacts from OCS energy activity may receive in a fiscal year.

In addition section 308(b)(4)(B) was amended by deleting the requirement that other CEIP financing, i.e., credit assistance under section 308(d)(1), be *unavailable* before a State or local community can utilize formula grants for planning, developing, and implementing projects and programs necessary to provide new or improved public facilities and services required as a result of OCS energy activity. The requirement that the OCS activity that necessitates the new or improved public facilities or public services be *new or expanded* was also deleted.

NOAA is reissuing today, in proposed form, regulations to implement the CEIP as amended by the OCSLAA. In addition to the statutorily mandated amendments, these proposed regulations contain proposed improvements in CEIP operations that are being instituted on the basis of two years of operating experience.

However, two OCSLAA created CEIP amendments are not being implemented in these proposed regulations. These are: (1) The discretionary authority of the Secretary of Commerce (Assistant Administrator for Coastal Zone Management; NOAA) to promulgate by rule criteria for describing geographic areas in which public facilities and public services are presumed to be required as a result of OCS energy activity; and (2) the establishment of a new fund for the provision of grants to States to carry out their responsibilities under the OCS Lands Act. A decision whether to implement the discretionary criteria provision will be made after a thorough analysis of the implications of this change for CEIP administration. The OCS grants provision is being implemented separately from the main body of the CEIP amendments and draft regulations describing the OCS grant program will be published in the FEDERAL REGISTER before February 1, 1979.

NOAA has determined that publication of this document is not a major action significantly affecting the quality of the human environment and does not require preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969. NOAA also has determined that this document is not a significant regulatory action and does not require preparation of a regulatory analysis under Executive Order 12044.

II. DISCUSSION OF MAJOR CHANGES TO THE CEIP

Subpart A—General. No substantive changes were made to this subpart. The subpart heading was renamed and other editorial changes were made to clarify the general structure of the CEIP and its objectives.

Subpart B—General Definitions. The definition of OCS energy activity was modified to more closely reflect the Congressional intent embodied in the statutory definition. The definition of *new employment*, *new or expanded OCS energy activity*, and *unavailability of credit assistance* were deleted because the statutorily mandated changes to the CEIP makes reference to these terms unnecessary. The definitions of *valuable, environmental resource*, and *recreational resource* were consolidated. The definition of *unavoidable* was changed to clarify the concept and to adhere to Congressional intent. Other changes in this subpart are largely editorial.

Subpart C—Basic Eligibility. The substance of this subpart is unchanged. However, the contents were restructured. The explanation of *satisfactory progress* is now a separate section (§ 931.26).

Subpart D—Planning for the Consequences of Energy Facilities. The minimum share that may be allotted to each State under section 308(c)(1) (formerly section 308(c)) has been increased to \$35,000. A ceiling of 10% of the amount available in a fiscal year under section 308(c)(1) has been established as the maximum allotment that any State may receive in 308(c)(1) planning grants.

The period of availability to a State of an allotment under 308(c)(1) has been reduced to one fiscal year. States must now apply for their 308(c)(1) planning allotment before the end of the fiscal year in which such funds were allotted. Allotted funds for which timely applications are not received will revert to the Assistant Administrator at the end of the fiscal year in which such funds were allotted. Funds reverting to the Assistant Administrator will generally be reallocated in the immediately following fiscal year.

The allotment process under section 308(c)(1) has been clarified. The requirement that section 308(c)(1) planning funds in any fiscal year be insufficient before section 308(b) planning funds can be accessed has been deleted.

Subpart E—Financing Public Facilities and Public Services. The producers for allotting credit assistance were clarified. The period of availability to a State of allotted credit assistance under section 308(d)(1) has been shortened. States must now submit applications by July 1 of the fiscal year in which the credit assistance was al-

lotted or risk having these funds recalled by the Assistant Administrator. However, States may request by July 1 an extension for submitting applications and the Assistant Administrator may grant such extension but now beyond January 1 of the immediately following fiscal year.

Allotted credit assistance that is recalled because it was not applied for within the prescribed time limits will be made available to all eligible coastal States by application. Priority of access to this recalled credit assistance will be determined by the priority in submitting a completed application. However, under exceptional circumstances, the Assistant Administrator may grant priority to a later application on the basis of immediacy of need and equity in distribution of CEIP credit assistance.

The requirement that section 308(b) grants can only be used to provide public facilities and services required as a result of "new or expanded" OCS energy activity was deleted in accordance with the OCSLAA. Public facilities and public services can now be provided under section 308(b) if they are required by ongoing OCS energy activity. In addition, the requirement that a State first use its credit assistance before accessing its formula grant allotment was removed in accordance with the OCSLAA.

Subpart F—Repayment Assistance. The changes in the subpart are largely editorial. However, the appeal procedure specified in §931.69 was simplified. The requirement that the Administrator of NOAA will, upon request, order a formal hearing on the record to resolve disputes concerning repayment assistance was deleted as imposing an unnecessary administrative burden on NOAA. The simplified appeals process is sufficient to protect the legitimate interests of borrowers.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources. The definitions of the terms *valuable, environmental resource* and *recreational resource* were consolidated to clarify the concepts of *valuable environmental* and *valuable recreational* resources. The definition of *unavoidable* was modified to comport more closely with the statutory definition. The description of the process for allotting section 308(b) formula grants (former §931.76) has been expanded in accordance with the OCSLAA mandated changes and made into a separate subpart—Subpart K.

The procedures for allotting section 308(d)(4) Environmental-Recreational grants has been significantly modified. Funds available for allotment under section 308(d)(4) will be allotted first among those States receiving less than \$400,000 in formula grants. Each State

eligible for 308(d)(4) grants will receive a minimum grant equal to five percent of the amount available under section 308(d)(4) and no State may receive more than 25 percent of the amount available. If any funds remain after allotting available funds among those States receiving less than \$400,000 in formula grants this remainder will be allotted among all coastal States eligible for section 308(d)(4) grants.

The time period during which funds allotted under section 308(d)(4) will remain available to a coastal State has been shortened to one fiscal year. Allotted funds for which applications are not received by the end of the fiscal year of allotment will revert to the Assistant Administrator at the end of such fiscal year. Funds allotted under section 308(d)(4) in fiscal year 1978 will be deemed allotted in fiscal year 1979 and will be subject to the new time period for submitting applications.

Subpart H—Lateral Seaward Boundaries. No substantive changes were made to this subpart.

Subpart I—General Provisions. Section 931.94 was modified to clarify those disbursements of CEIP funds for which the applicant will not be required to submit an environmental analysis.

Subpart J—Intrastate Allocation of Financial Assistant. The intrastate allocation process was simplified. The threshold amount that triggers a State's compliance with the "a" process was raised to \$1 million in CEIP grants. The amount of credit assistance allotted to a State is no longer a factor in determining whether a State must comply with the "a" or "b" process.

Subpart K—Allotment of Section 308(b) Formula Grants. This subpart is new. It embodies the detailed procedures established by the OCSLAA for allotting formula grants among eligible coastal States.

These proposed regulations are subject to comment and modification. Written comments on the regulations should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. Attention Dan Hoydysh.

R. L. CARNAHAN,
Acting Assistant Administrator
for Administration.

In consideration of the foregoing Part 931 is revised as follows:

Subpart A—General

- Sec. 931.1 Coastal Energy Impact Program—General Description.
- 931.2 Objectives of the CEIP.

Subpart B—General Definitions

- Sec. 931.9 Index to definitions.
- 931.10 Act.
- 931.11 Coastal zone.
- 931.12 Fund.
- 931.13 Coastal energy activity.
- 931.14 Significantly affected.
- 931.15 New or expanded coastal energy activity.
- 931.16 Outer Continental Shelf.
- 931.17 Outer Continental Shelf energy activity.
- 931.18 [Reserved]
- 931.19 Energy facility.
- 931.20 New or expanded energy facility.
- 931.21 [Reserved]
- 931.22 Unit of general purpose local government and unit of local government.
- 931.23 NOAA and OCZM.
- 931.24 Assistant Administrator.

Subpart C—Basic Eligibility

- 931.25 Eligible coastal State.
- 931.26 Satisfactory progress.

Subpart D—Planning for the Consequences of Energy Facilities

- 931.30 General.
- 931.31 Objectives.
- 931.32 Eligibility for planning assistance under this Subpart.
- 931.33 Allowable uses.
- 931.34 Limitations.
- 931.35 Planning inventory.
- 931.36 Planning need formula.
- 931.37 Allotment of 308(c)(1) planning grants among coastal States.
- 931.38 Application procedure.
- 931.39 reversion of funds allotted under section 308(c)(1).

Subpart E—Financing Public Facilities and Public Services

- 931.40 General.
- 931.41 Objectives.
- 931.42 Definitions.
- 931.43 Allowable uses.
- 931.44 Eligibility.
- 931.45 Credit assistance inventory.
- 931.46 Allotment formula.
- 931.47 Allotment of credit assistance.
- 931.48 Allotment of section 308(b) formula grants.
- 931.49 Recall and reversion of allotted credit assistance funds.
- 931.50 Application for recalled or reverted credit assistance.
- 931.51 Contents of credit assistance application.
- 931.52 Special requirements for section 308(d)(1) loans.
- 931.53 Special requirements for section 308(d)(2) Federal guarantees.

Subpart F—Repayment Assistance

- 931.60 General.
- 931.61 Objectives.
- 931.62 Definitions.
- 931.63 Purposes.
- 931.64 Sources of repayment assistance.
- 931.65 General eligibility.
- 931.66 Reports.
- 931.67 Review for repayment assistance.
- 931.68 Award of repayment assistance.
- 931.69 Appeal procedure.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

- 931.70 General.
- 931.71 Objectives.

Sec.

- 931.72 Definitions.
- 931.73 Allowable uses.
- 931.74 Eligibility.
- 931.75 Allotment of section 308(d)(4) Environmental-Recreational Grants.
- 931.76 Reversion of allotted funds.
- 931.77 Application procedure.
- 931.78 [Reserved]
- 931.79 Limitations

Subpart H—Lateral Seaward Boundaries

- 931.80 General.
- 931.81 Establishment of delimitation lines when agreements exists between States.
- 931.82 Establishment of demarcation lines when no agreement exists between States.
- 931.83 Establishment of delimitation lines under later compacts, agreements, or judicial decisions.
- 931.84 Procedures for defining delimitation lines by equidistance principles.
- 931.85 Formula grants impounded for disputed areas.

Subpart I—General Provisions

- 931.90 Allowable costs.
- 931.91 Administrative procedures.
- 931.92 Compliance with OMB Circular A-95 requirements.
- 931.93 Other Federal requirements.
- 931.94 Environmental Impact Statements.
- 931.95 Records.
- 931.96 Audit.
- 931.97 Recovery of funds.
- 931.98 Coordination with other Federal agencies.

Subpart J—Intrastate Allocation of Financial Assistance

- 931.110 General.
- 931.111 Objective.
- 931.112 Intrastate allocation.
- 931.113 Forms of assistance.
- 931.114 Appeal to Assistant Administrator.

Subpart K—Allotment of Section 308(b) Formula Grants

- 931.120 General.
- 931.121 Definitions.
- 931.122 OCS Regions.
- 931.123 Impacted State.
- 931.124 Allotment of formula grants.
- 931.125 Recall of formula grants.

AUTHORITY: Sec. 308, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, U.S.C. 1451 et seq.), as amended by Pub. L. 95-372.

Subpart A—General

§ 931.1 Coastal energy impact program—General description.

The Coastal Energy Impact Program (CEIP) was established under section 308 of the Act to provide coastal States and local governments in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. Such assistance includes:

(a) Grants to coastal States under subsection b(5)(B) for the study of, planning for, development of, and the carrying out of projects and programs to provide new or improved public facilities or public services required as

a result of outer continental shelf energy activity;

(b) Grants under subsections (b)(5)(C) and (d)(4) for preventing, reducing, or ameliorating unavoidable losses of valuable coastal environmental or recreational resources when such losses result from coastal energy activity;

(c) Grants under subsection (c)(1) for the study of, and planning for significant economic, social, or environmental consequences in the coastal zone when such consequences result from the siting, construction or operation of new or expanded energy facilities;

(d) Credit assistance under subsections d(1) and d(2) and appropriate forms of repayment assistance under subsections d(3) and b(5)(A) to provide new or improved public facilities or public services required as a result of coastal energy activity;

(e) Grants under subsection c(2) to assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the Outer Continental Shelf Lands Act.

§ 931.2 Objectives of the CEIP.

(a) The principle objectives of the CEIP are:

(1) To improve and strengthen coastal zone management in the United States by providing financial assistance only for programs and projects that are in accord with the policy of the Coastal Zone Management Act and the coastal zone management objectives of the individual States.

(2) To preserve and enhance the Nation's valuable coastal recreational and environmental resources by

(i) Encouraging the timely and thorough planning for the management of adverse consequences in the coastal zone caused by energy facility siting and energy resource development; and

(ii) Encouraging coastal States and local governments to effectively exercise their responsibilities to minimize losses to valuable coastal environmental or recreational resources that result from coastal energy activity.

(3) To advance the national objective of obtaining a greater degree of energy self sufficiency by encouraging the rational and timely development of domestic coastal energy resources and energy resource transportation systems.

(4) To protect and improve the quality of the human environment in the coastal zone by providing financial assistance to coastal States and units of local government for new and improved public facilities required as a result of coastal energy activity.

(5) To provide financial assistance that is simple to administer and that permits the coastal States and units of

local government a high degree of control and discretion.

(6) To assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the OCS Lands Act.

(b) The CEIP will be administered in a manner that will strike a balance between the major national goals of obtaining a greater degree of energy self-sufficiency and protecting the coastal environment:

(1) Only coastal energy activity necessary for the rational, timely and orderly development of the Nation's coastal energy resources will be encouraged; and

(2) Unnecessary development in the coastal zone will be discouraged by providing financial assistance only for those public facilities and public services that are actually needed because of coastal energy activity.

Subpart B—General Definitions

§ 931.9 Index to definitions.

The following listing includes important terms defined in this Part 931 of the title keyed to the section or paragraph where they are defined.

<i>Term</i>	<i>Section</i>
Act.....	931.10(a)
Assistant Administrator.....	931.24
Borrower.....	931.62
Coastal energy activity.....	931.13
Coastal zone.....	931.11
Development.....	931.17(d)
Eligible coastal State.....	931.25
Energy facility.....	931.19
Energy facility directly required by OCS energy activity.....	931.17(b)
Exploration.....	931.17(c)
First landed.....	931.121(a)
Fiscal schedule.....	931.48(b)(2)
Fund.....	931.12
In close proximity to.....	931.13(d)
Joint funding.....	931.98(b)(1)
Loss.....	931.72(c)
New or expanded coastal energy activity.....	931.15
New or expanded energy facility.....	931.20
New or improved public facility.....	931.42(c)
New or improved public service.....	931.42(d)
NOAA.....	931.23
OCZM.....	931.23
Outer Continental Shelf.....	931.16
Outer Continental Shelf energy activity.....	931.17
Person.....	931.72(f)
Production.....	931.17(e)
Public facility.....	931.42(a)
Public service.....	931.42(b)
Section.....	931.10(b)
Significantly affected.....	931.14
Unavoidable.....	931.72(d)
Unit of general purpose local government and unit of local government.....	931.22
Valuable environmental resource.....	931.72(a)
Valuable recreational resource.....	931.72(b)

§ 931.10 Act.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended, (16 U.S.C. 1451 et seq).

(b) The term "section" or "subsection" means a section or subsection of the Coastal Zone Management Act of 1972, as amended, unless it is clear

from the context that some other meaning is intended.

§ 931.11 Coastal zone.

The term "coastal zone" is that area of land and water whose boundaries are determined by a State under § 920.11 of this chapter for purposes of the development of a coastal zone management program under section 305, or under § 923.11 of this chapter for purposes of administering a coastal zone management program under section 306, or as part of a management program which is consistent with the policies set forth in section 303. Such boundaries must be approved by the Assistant Administrator.

§ 931.12 Fund.

The term "Fund" means the Coastal Energy Impact Fund established under section 308(h).

§ 931.13 Coastal energy activity.

(a) The term "coastal energy activity" is limited to the following activities:

(1) Any Outer Continental Shelf energy activity;

(2) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas; or

(3) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Ports Act of 1974 (33 U.S.C. 1502(10)).

(b) An activity is a "coastal energy activity" only to the extent that:

(1) The conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion or operation of any equipment or facility; and

(2) The Assistant Administrator determines that a technical requirement exists which necessitates that such siting, construction, expansion, or operation be carried out in, or in close proximity to, the coastal zone of any coastal State.

(c) Such technical requirements are limited to:

(1) Dependency on coastal waters;

(2) Safety;

(3) Proximity to oil or natural gas fields;

(4) Location of markets;

(5) Federal siting regulations or decisions;

(6) Type and amount of required land; and

(7) Competitive uses for any environmental or recreational resource affected by such siting, construction, expansion, or operation.

(d) The siting, construction, expansion, or operation of any equipment or facility shall be "in close proximity to" the coastal zone of any coastal State if such coastal zone has been or is likely

to be significantly affected by such siting, construction, expansion, or operation.

§ 931.14 Significantly affected.

The coastal zone of a coastal State is "significantly affected" by the siting, construction, expansion, or operation of an energy facility if such siting, construction, expansion, or operation:

(a) Causes or is likely to cause population changes in the coastal zone;

(b) Changes or is likely to change employment patterns in the coastal zone, including those in fishing and tourism;

(c) Damages or threatens to damage any valuable environmental or recreational resources in the coastal zone, including air, water or noise quality;

(d) Increases or threatens to increase risks to public safety and real property in the coastal zone.

§ 931.15 New or expanded coastal energy activity.

(a) The term "new or expanded coastal energy activity" means any coastal energy activity if the siting, construction, expansion, initial operation, or replacement, in whole or in part, of any equipment or facility required by the conduct, support, or facilitation of such activity takes place after July 26, 1976.

(b) The term "expansion" includes both the physical expansion of a facility and the expansion of the output of the facility.

(c) The term "initial operation" is intended to include the case in which a previously operating but then idle energy facility is reactivated after July 26, 1976.

§ 931.16 Outer Continental Shelf.

The term "Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

§ 931.17 Outer Continental Shelf energy activity.

(a) The term "Outer Continental Shelf energy activity" means:

(1) Any exploration for, or any development or production of, oil or natural gas from the Outer Continental Shelf; or

(2) The siting, construction, expansion or operation of any new or expanded energy facilities that are directly required by such exploration, development or production.

(b) The term "directly" required by Outer Continental Shelf energy activity refers to a new or expanded energy facility that has a technical requirement that necessitates its location in

or in close proximity to the coastal zone and is:

(1) Any equipment or facility used primarily in the exploration for or the development, production or transportation of any oil or natural gas from the Outer Continental Shelf; or

(2) Any facility or equipment used primarily for the manufacture, production or assembly of equipment, machinery, or devices that are necessary to and ordinarily used in the exploration for, or development or production or transportation of oil or natural gas from the Outer Continental Shelf. Such equipment and facilities include but are not limited to:

(i) Gas processing and treatment plants

(ii) Platform fabrication yards

(iii) Pipe coating yards

(iv) Service bases

(v) Marine pipelines

(vi) Drilling rigs and drill ships

(vii) Production platforms

(viii) Offshore terminals

(ix) Marine repair and maintenance facilities

(x) Oil storage terminals

(c) The term "exploration" means the process of searching for oil or natural gas, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of oil or natural gas, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to determine whether to proceed with development and production.

(d) The term "development" means those activities which take place following discovery of oil or natural gas in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the oil and gas discovered.

(e) The term "production" means those activities which take place after the successful completion of any means for the removal of oil or natural gas, including such removal, field operations transfer of oil or natural gas to shore, operation monitoring, maintenance, and work-over drilling.

§ 931.18 [Reserved]

§ 931.19 Energy facility.

(a) The term "energy facility" means any equipment or facility which is or will be used primarily:

(1) In the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(2) For the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in the activities described in paragraph (a)(1) of this section.

(b) The term includes:

(1) Electric generating plants, including those involving fossil or biomass fuels, nuclear power, direct solar energy, ocean thermal energy conversion, tidal or wave power, wind power, or geothermal energy, and associated transmission systems;

(2) Petroleum refineries and associated facilities;

(3) Gasification plants;

(4) Facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas;

(5) Uranium enrichment or nuclear fuel processing facilities;

(6) Coal storage, transportation or transfer facilities;

(7) Drilling rigs, platforms, subsea completions, and subsea production systems;

(8) Construction yards for platforms and exploration rigs, pipe coating yards, bases supporting platforms and pipeline installation, and crew and supply bases;

(9) Oil and gas storage facilities;

(10) Marine pipeline systems;

(11) Oil and gas processing facilities;

(12) Transportation systems connecting any of the facilities in this section with primary transportation systems;

(13) Facilities, including deepwater ports, for the transfer of petroleum;

(14) Facilities for geopressurized gas; and

(15) Terminals which are associated with any of the foregoing.

§ 931.20 New or expanded energy facility.

The term "new or expanded energy facility" refers to an energy facility whose siting, construction, expansion, initial operation, or replacement, in whole or in part, takes place after July 26, 1976.

§ 931.21 [Reserved]

§ 931.22 Unit of general purpose local government and unit of local government.

(a) The term "unit of general purpose local government" means:

(1) Any political subdivision of any coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(2) Any political subdivision of any coastal State that is located within a political subdivision of such coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(3) Any special entity created by such coastal State or political subdivision that (in whole or in part) is located

in or has authority over any portion of such State's coastal zone.

(b) The term "unit of general purpose local government" is limited to those entities described in paragraph (a) of this section that:

(1) Have authority to levy taxes or establish and collect user fees or planning districts with no taxing power; and

(2) Provide any public facility or public service that is financed in whole or in part by taxes or user fees.

(c) The term "unit of local government" means any unit of general purpose local government, as defined in paragraphs (a) and (b) of this section, or any agency recognized or designated as an areawide or regional comprehensive planning and development agency pursuant to Office of Management and Budget Circular A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, or under Title IV of the Intergovernmental Cooperation Act of 1968.

§ 931.23 NOAA and OCZM.

(a) The acronym "NOAA" means the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(b) The acronym "OCZM" means the Office of Coastal Zone Management of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 931.24 Assistant Administrator.

The term "Assistant Administrator" for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Subpart C—Basic Eligibility

§ 931.25 Eligible coastal State.

(a) No coastal State is eligible to receive any financial assistance under this part unless such State.

(1) Has a management program which has been approved under section 306;

(2) Is receiving a grant under sections 305(c) or (d); or

(3) Is making, in the judgment of the Assistant Administrator, satisfactory progress toward the development of a management program which is consistent with the policies set forth in section 303.

(b) No eligible coastal State can receive an allotment under this part unless the Governor of such State has designated a State agency or agencies or in the case of assistance under section 308(c)(2) a responsible official:

(1) To apply for financial assistance under section 308;

(2) To assure, to the maximum extent practicable, that financial as-

sistance provided under section 308 is apportioned, allocated, and granted to units of local government within such State on a basis which is proportional to the extent to which such units need such assistance; and

(3) To receive and administer section 305 grants pursuant to § 920.42 of this chapter, to receive and administer section 306 grants pursuant to § 923.23 of this chapter, or to administer a State coastal management program which is consistent with the policies set forth in section 303.

(i) In the event the coastal State is implementing a management program approved under section 306, all applications for financial assistance under section 308 shall be reviewed for consistency with the State's management program by the State agency administering the State's coastal management program in accordance with the requirements of section 307(d).

(ii) In the event the coastal State is developing a management program pursuant to section 305 or in a manner consistent with the policies of section 303, all applications for financial assistance under section 308 shall be reviewed for compatibility with the State's developing coastal management program by the State agency developing the management program.

(c) While preferable in terms of coordination, it is not required that a single entity perform all three functions stated in paragraph (b) of this section. The State coastal zone management agency designated pursuant to paragraph (b)(3) need not be the agency performing one or both of the functions required by paragraphs (b) (1) and (2) of this section. However, in the event different entities are designated under paragraphs (a) (1), (2), and (3), one agency must be designated to assure coordination with the others.

§ 931.26 Satisfactory progress.

(a) The Assistant Administrator shall judge that a State is making satisfactory progress toward the development of a management program consistent with the policies set forth in section 303 if one of the following conditions is met:

(1) A coastal State has exhausted its eligibility for program development funding under section 305 without achieving program implementation approval under section 306, but is still pursuing development and implementation of a management program consistent with the policies set forth in section 303; or

(2) A coastal State's eligibility for program funding under section 305 or section 306 has been suspended, but the State is making adequate efforts to reacquire eligibility under sections 305 or 306 and still pursuing develop-

ment of a management program consistent with the policies set forth in section 303; or

(3) A coastal State is otherwise pursuing a comprehensive management program which is consistent with the policies set forth in section 303 and for good cause shown is not developing or implementing such program under sections 305 or 306.

(b) The phrase "consistent with the policies set forth in section 303" refers to a management program which incorporates:

(1) Policies which provide for the preservation, protection, development, and, where possible, the restoration or enhancement of the resources of the State's coastal zone;

(2) Provisions which insure wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values, as well as to needs for economic development. Such provisions shall include, but are not limited to:

(i) Identification of a coastal zone which is capable of being delineated and which is subject to management under the program;

(ii) Identification of permissible land and water uses for the area within the coastal zone;

(iii) Procedures for assuring that land and water uses of regional and national benefit are not arbitrarily restricted or excluded in policies or management of mechanisms developed pursuant to the State's program;

(iv) State and local legal authorities and organizational structures sufficient to effectuate management over identified land and water uses within the coastal zone; and

(v) Coastal zone water pollution and air pollution control consistent with the requirements of the Clean Water Act, as amended, and the Clean Air Act, as amended.

(3) An opportunity for Federal agencies having interest affecting the State's coastal zone to participate in the development of the State's management program and have their views adequately considered; and

(4) An opportunity for local governments, State and regional agencies, commercial and industrial groups, and the general public to participate in the development of the State's management program and have their views adequately considered.

Subpart D—Planning for the Consequences of Energy Facilities

§ 931.30 General.

This subpart sets forth the objectives of providing planning assistance to coastal States under sections 308(c)(1) and 308(b) and its allowable uses. It also describes procedures for allotting section 308(c)(1) moneys

among eligible coastal States and for applying for financial assistance under sections 308(c)(1) and 308(b). Procedures for the allotment of section 308(b) assistance are described in Subpart K.

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To assist coastal States and units of local government in the study of and planning for any economic, social, or environmental consequence which has occurred, is occurring, or is likely to occur in such State's coastal zone as a result of the siting, construction, expansion, or operation of new or expanded energy facilities;

(b) To encourage rational, timely, and thorough planning for and the management of the impacts from energy resource development;

(c) To help coastal States and units of local government:

(1) Plan for the provision of public facilities and public services required as a result of OCS energy activity; and

(2) Apply to specific locations and energy facilities the energy facility planning and impact management process included in State coastal zone management programs under section 305(b)(8).

§ 931.32 Eligibility for planning assistance under this subpart.

(a) A coastal State is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C.

(b) A unit of local government may apply for assistance through its State.

§ 931.33 Allowable uses.

(a) Allowable uses of section 308(c)(1) grants under this subpart includes:

(1) Planning for economic, social, or environmental consequences of new or expanded energy facilities, coastal energy activities, or OCS energy activities significantly affecting the coastal zone, including:

(i) Analysis of government or private industry siting, licensing, or leasing policies and related data and information;

(ii) Devising strategies for the public purchase of land or the establishment of other enforceable land-use controls for lands upon or near which energy development is to take place;

(iii) Devising methods of protecting environmental or recreational resources threatened by the siting, construction, operation, or expansion of new or expanded energy facilities; or

(iv) Conducting risk management studies, hazard analyses, emergency contingency planning and coordination studies, and assessments of mitigating measures for maintaining or improving public safety threatened by

the siting, construction, expansion, or operation of new or expanded energy facilities.

(2) Planning for the consequences of a specific new or expanded energy facility significantly affecting the coastal zone, including: (i) Study of and planning for economic, social, or environmental consequences of the siting, construction, expansion, or operation of a new or expanded energy facility such as:

(A) Changes in population;

(B) Changes in employment patterns, including those in fishing and tourism;

(C) Changes in demand for public facilities, public services, and housing;

(D) Local price inflation;

(E) Changes in patterns of tax and user fee revenues or intergovernmental transfers;

(F) Effects of fishing, tourism, and other economic resources;

(G) Effects on beaches, dunes, air quality, water quality, or other environmental or recreational resources;

(H) Shoreline erosion;

(I) Ecological effects; and

(J) Effects on public safety.

(ii) Conducting analyses required for state or local regulatory decisions related to energy facilities, including licenses, leases, permits, and zoning ordinances;

(iii) Performing cost/benefit analyses or otherwise comparing the consequences of alternative energy facility sites or types;

(iv) Devising strategies for recovering compensation from appropriate parties for any adverse effects caused by the energy facility involved;

(v) Forecasting employment, population, public facility and public services needs and costs, and tax or user-fee revenues;

(vi) Planning for the public facilities eligible for financing under Subpart E of this part, including engineering feasibility;

(vii) Study of and planning for the secondary consequences, including environmental and economic consequences, of alternative types and sites of public facilities eligible for financing under Subpart E of this part; and

(viii) Study of and planning for the consequences of the phasing out of energy facilities.

(3) Carrying out projects necessary to administer assistance under section 308, including:

(i) Collecting data and analyzing information required by § 931.94 for environmental impact assessment;

(ii) Designing and carrying out an intrastate allocation process as described in Subpart J of this part; and

(iii) Paying other reasonable costs of administering assistance under section 308.

(b) Allowable uses of section 308(b) grants under this subpart include:

(1) Those allowable uses given in paragraph (a) of this section if they are necessary to provide new or improved public facilities and public services required as a result of OCS energy activity; and

(2) Architectural and engineering services for the design and construction of projects eligible for funding under sections 308(b)(5) (B) and (C).

Incorporated in limitations section.

§ 931.34 Limitations.

(a) Grants awarded to a coastal State under section 308(c)(1) may not exceed 80 percent of the actual cost of the study or planning. States may use in-kind contributions as the non-Federal matching share in accord with Office of Management and Budget Circular A-102.

(b) Although the use of section 308(c)(1) planning assistance must be related to new or expanded energy facilities there is no requirement that the use of this planning assistance be tied to the specific energy facilities listed on the planning inventory described in § 931.35 because it is recognized that the planning inventory will not in all cases capture every new or expanded energy facility.

(c) Section 308(c)(1) and 308(b)(5)(B) planning assistance may not be used:

(1) To develop the general planning process for energy facilities required of state management programs under section 305(b)(8); or

(2) For general energy studies or plans divorced from actual, proposed, or likely new or expanded energy facilities, coastal energy activities, or OCS energy activities.

(Comment. According to the Act, States may use section 305 grants to develop the general planning process for coastal energy facilities required under section 305(b)(8)).

§ 931.35 Planning inventory

(a) At the end of each fiscal year the Assistant Administrator will compile an inventory of new or expanded energy facilities that have significantly affected the coastal zone, are significantly affecting the coastal zone, or are likely to significantly affect the coastal zone of that State.

(b) The purpose of the planning inventory is:

(1) To identify those significant social, environmental or economic consequences in the coastal zone that may be prevented, ameliorated or controlled through proper study and planning; and

(2) To provide a basis for estimating the relative planning need among coastal states eligible to receive financial assistance under section 308(c)(1).

(c) To assure that the planning inventory reasonably reflects actual

planning need, new or expanded energy facilities that significantly affect the coastal zone will be placed on the planning inventory only if:

(1) A major State or Federal permit has been applied for to site, construct, expand or initially operate such facility;

(2) The Assistant Administrator determines on the basis of reasonable evidence submitted by the eligible coastal State that such facility is likely to be sited, constructed, expanded or initially operated in the near future; or

(3) Such facility is projected to be required as a result of a lease sale scheduled by the Department of Interior to occur within the three fiscal years immediately following the fiscal year for which the inventory is compiled.

(d) To assure an equitable distribution of financial assistance among coastal States, facilities shall not be placed on the planning inventory or shall be removed from the planning inventory if:

(1) Such facility began operating in the fiscal year for which the inventory is compiled;

(2) Such facility has been on the inventory for a total of four fiscal years; or

(3) The Assistant Administrator determines that the study of or planning for the consequences of such facility is no longer required.

(e) The Assistant Administrator may allow facilities to remain on the inventory for more than four fiscal years if the state can demonstrate that such inclusion is necessary to prevent significant impacts on the coastal zone.

§ 931.36 Planning need formula.

(a) *Planning Need Factors.* The Assistant Administrator will establish for various types of energy facilities planning need factors approximating the social, economic and environmental consequences associated with each facility type. These need factors will be reviewed each fiscal year in light of the best available information concerning the effects associated with and characteristics of the various energy facility types.

(b) *Planning Need Formula.* The Assistant Administrator will develop a formula for estimating the need to plan for the social, economic and environmental consequences associated with a new or expanded energy facility. This planning need formula will take into account the planning need factors established under paragraph (a) of this section. The planning need formula will be reviewed each fiscal year and modified as appropriate.

§ 931.37 Allotment of 308(c)(1) planning grants among coastal States.

(a) Funds available in a fiscal year under section 308(c)(1) shall consist of:

(1) Funds appropriated to the Fund for section 308(c)(1) purposes for that fiscal year;

(2) Funds allotted in previous fiscal years under section 308(c)(1) reverting to the Assistant Administrator under § 931.39 because they were not applied for by the recipient coastal State within the time periods allowed by that section;

(3) Funds allotted in previous years under section 308(c)(1) recalled under section 931.97 because such funds were expended for unauthorized uses; and

(4) Funds from any other sources that may be used in that fiscal year under 308(c)(1).

(b) The Assistant Administrator shall allot available funds among eligible coastal States according to the following procedures:

(1) *State Review.* Before computing an allotment for any fiscal year, the Assistant Administrator will provide eligible coastal States with:

(i) The inventory of new or expanded energy facilities (planning inventory) described in § 931.35; and

(ii) The planning need factors and the planning need formula described in § 931.36. The States will have 30 days to submit comments to the Assistant Administrator who will revise the inventory, factors, or formula as appropriate.

(2) *Minimum Share.* The Assistant Administrator may allot to each eligible coastal State an equal minimum share. This minimum share will be an amount which, at the Assistant Administrator's discretion, is considered sufficient to allow the recipient State to effectively participate in the CEIP. However, the minimum share will not exceed \$35,000.

(3) *Formula Share.* The funds remaining after the minimum shares are subtracted from the total amount available will be allotted on the basis of planning need equivalencies as follows:

(i) A planning need equivalency for each new or expanded energy facility on the planning inventory will be calculated by applying the planning need formula to each facility. A State's planning need equivalency will be the sum of the planning need equivalencies of all facilities on that State's planning inventory.

(ii) Each State's formula share will equal the product of:

(A) The funds remaining; and

(B) The ratio of that State's planning need equivalency to the sum of the planning need equivalencies of all States.

(4) *Allotted Share.* An eligible coastal State's allotment of section 308(c)(1)

funds will be the sum of the minimum share and the formula share except that a State's allotted share may not exceed 10% of the total amount available.

(i) If the sum of the minimum share and the formula share exceeds 10% of the amount available under section 308(c)(1), the allotment of such State shall be reduced to an amount equal to 10% of the amount available. Any excess funds obtained by reducing State allotments to 10% of the amount available will be redistributed among the other eligible coastal States in proportion to their planning need equivalencies.

(ii) If after reducing any State's allotment under subparagraph (4)(i) of this paragraph it is not mathematically possible to redistribute the excess funds without exceeding the 10% ceiling, the redistribution of such excess funds will be carried out without regard for the ceiling.

§ 931.38 Application procedure.

(a) To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for planning assistance under section 308(c)(1) and section 308(b) must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the planning assistance has been allocated within the State in accord with the intrastate allocation process described in subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the planning assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) A showing, if the application for assistance has not been submitted to the Project Notification and Review System established by OMB Circular No. A-95 (Part I), that a memorandum of agreement for coordinating planning under section 308 with areawide comprehensive planning has been consummated with appropriate areawide clearinghouses in the State's coastal zone, pursuant to Part IV, Attachment A, of OMB Circular A-95; and

(4) A brief description of the activity or activities to be performed indicating the relationship to allowable uses under § 931.33.

(c) In addition, applications for section 308(b) grants must contain such adequate assurances as are required by § 931.97(a).

(d) It is the Assistant Administrator's intent to process completed applications within 45 days of receipt.

§ 931.39 Reversion of funds allotted under section 308(c)(1).

(a) Allotted funds for which applications are not received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of that fiscal year.

(b) Allotted funds for which applications are received within the fiscal year in which they were allotted will remain available to the State until awarded. Allotted funds for which applications are disapproved or withdrawn will remain available for reapplication by the State until the end of the fiscal year or for 60 days after such disapproval or withdrawal whichever is later. If a substitute application is not submitted for these funds before the end of the fiscal year or before the 60 day time period expires, such funds will revert to the Assistant Administrator at the end of the fiscal year or at the end of the 60-day period.

(c) Funds reverting to the Assistant Administrator under this section will be reallocated as soon as practicable among eligible coastal States according to the procedures of this subpart.

Subpart E—Financing Public Facilities and Public Services

§ 931.40 General.

This subpart sets forth the objectives for providing assistance to coastal States and units of general purpose local government under sections 308(d)(1) and (2) and 308(b), (5)(B) and (C) and its allowable uses. This subpart also describes the procedures for allotting credit assistance among coastal States, and for applying for credit assistance under sections 308(d)(1)(2), formula grants under section 308(b).

§ 931.41 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal States and units of general purpose local government finance new or improved public facilities and public services needed because of coastal energy activity;

(b) To provide front-end financing that can be expected to be repaid later from revenues generated by the coastal energy activity;

(c) To assure that necessary development in coastal areas is consistent with State coastal zone management objectives, the safeguarding of valuable national coastal environmental and recreational resources, and public safety; and

(d) To discourage unnecessary development in the coastal zone by providing assistance only for those public facilities and public services actually needed because of coastal energy activity.

§ 931.42 Definitions.

(a) The term "public facility" includes, but is not limited to, the following facilities to the extent that they are financed by any State or unit of general purpose local government; that they meet the requirements of Subpart I of this part; and that they do not primarily serve industrial facilities, except if the public facilities are wholly owned by a unit of general purpose local government and if industrial user charges from the facilities will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart.

(1) *Education.* Day care centers; primary, secondary, and general vocational schools, including portable classrooms and temporary facilities; school equipment; libraries, including books and equipment;

(2) *Environmental protection.* Facilities and equipment used to monitor or control air and water quality or noise standards, to insure the continued viability of fish, wildlife, and land resources, to prevent or control erosion; land acquisition for environmental protection;

(3) *Government administration.* Facilities and equipment essential for general government administration;

(4) *Health care.* Emergency medical facilities and equipment, including ambulances; clinic and hospital buildings and equipment; alcohol and drug abuse centers; emergency shelter and sanitary facilities;

(5) *Public safety and law enforcement.* Detention centers, police equipment and stations, fire stations and firefighting equipment, fire training centers, animal control facilities, communication facilities and equipment, and rescue facilities and equipment;

(6) *Recreation.* Facilities and equipment for amateur sports and performing arts, community recreational centers, local parks and playgrounds, acquisition of parkland or beaches or of public access to such land or beaches;

(7) *Transportation.* Street and street lighting, roads, bridges, road maintenance equipment, parking associated with public facilities, docks, air and water navigation aids, canals and navigation facilities, air terminals in remote areas, mass transit including bus and ferry systems;

(8) *Public utilities.* Electric generating plants and distribution systems; natural gas distribution systems; solid waste collection systems; waste collection and treatment systems, including drainage; water supply systems; and telephone systems.

(b) The term "public service" means any service authorized by law to be provided by a State or unit of general purpose local government to the extent that:

(1) It is financed by the State or unit of general purpose local government;

(2) It meets the requirements of Subpart I of this part; and

(3) It does not primarily serve industrial facilities unless industrial user charges will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart.

(c) A public facility is considered "new or improved" if it is constructed, expanded, or renovated after July 26, 1976.

(d) A public service is considered "new or improved" if the proposed type or increased level of service was not offered in the fiscal year before the application for assistance for such service.

§ 931.43 Allowable uses.

(a) Credit assistance available from the Fund under sections 308(d) (1) and (2) is to be used to finance new or improved public facilities and public services that are required as a result of coastal energy activity.

(b) Grant assistance under section 308(b) is to be used for the development of, and the carrying out of projects and programs necessary to provide new or improved public facilities and public services that are required as a result of OCS energy activity.

§ 931.44 Eligibility.

(a) To be eligible for allotments and assistance from the Fund under sections 308(d) (1) or (2) or from formula grants under section 308(b), a coastal State must meet the basic eligibility requirements of Subpart C.

(b) A unit of general purpose local government may apply for assistance through its State.

§ 931.45 Credit assistance inventory.

(a) At the end of each fiscal year, the Assistant Administrator will compile for each eligible coastal State an inventory of new or expanded coastal energy activities.

(b) The purpose of this inventory is:

(1) To identify new or expanded coastal energy activities that have caused, are causing, or are likely to cause a need for new or improved public facilities and public services; and

(2) To provide a basis for estimating the relative need for credit assistance among eligible coastal States.

(c) To assure that the credit assistance inventory reasonably reflects actual need for new or improved public facilities and public services, a new or expanded energy activity will be placed on the inventory only if the Assistant Administrator determines that such activity is likely to necessitate new or improved public facilities or public services, and

(1) A major State or Federal permit has been approved to conduct such activity; or

(2) Such activity is described in exploration plans or production and development plans approved by the Department of the Interior; or

(3) The Assistant Administrator, based on reasonable evidence submitted by the State, determines that such activity is likely to be carried out in the near future.

(d) To assure an equitable distribution of credit assistance among coastal States, a coastal energy activity will not be placed on the inventory or will be removed from the inventory in a fiscal year if such activity:

(1) Was on the inventory in any preceding fiscal year; and

(2) The Assistant Administrator determines that adequate credit assistance was allotted to a coastal State as a result of such activity.

§ 931.46 Allotment formula

(a) The Assistant Administrator will develop a formula for allotting moneys appropriated under section 308(d)(1) and (2). Such formula will be based on, and limited to, the following factors:

(1) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity and will reside in the coastal State;

(2) The new population in the coastal State associated with such energy activity; and

(3) The standardized unit costs for new or improved public facilities and public services required as a result of such expected employment and related new population.

(b) The Administrator will periodically review and, if appropriate, revise this formula on the basis of the best available data concerning the need for public facilities and services created by coastal energy activity.

§ 931.47 Allotment of credit assistance.

(a) *State Review.* Before computing an allotment for any fiscal year, the Assistant Administrator will provide eligible coastal States with:

(1) The inventory of coastal energy activities (credit assistance inventory) described in § 931.45;

(2) Data on new employment and related new population for each activity on the credit assistance inventory; and

(3) The allotment formula described in § 931.46. Coastal States will have 30 days to submit comments on this information to the Assistant Administrator who will revise the inventory, employment and population data, and formula as appropriate.

(b) *Allotment Computation.* After the State review described in paragraph (a) a public facility and public service need factor will be calculated

for each activity on the credit assistance inventory by applying the allotment formula to the activity. A State's need factor will be the sum of the need factors for all activities on that State's credit inventory. A State's allotment of credit assistance will equal the product of:

(1) The amount appropriated under section 308(d)(1) and (2); and

(2) The ratio of that State's public facility and public service need factor to the sum of the public facility and public service need factors of all States.

§ 931.48 Allotment of section 308(b) formula grants.

The annual allotment of formula grants among coastal States is described in Subpart K.

§ 931.49 Recall and reversion of allotted credit assistance funds.

(a) This section applies only to credit assistance funds allotted under § 931.47

(b) Allotted funds for which applications are not received by July 1 of the fiscal year in which such funds were allotted may be recalled by the Assistant Administrator 30 days after notification of the State agency designated in § 931.25(b)(1). If, before the expiration of the 30-day notification period the State requests an extension for submitting applications, the Assistant Administrator may grant such extension. However, the time for submitting applications will not be extended beyond January 1 of the following fiscal year.

(c) A request for extension must contain the following information:

(1) The name of the expected applicant for the credit assistance;

(2) The use to which the assistance would be put;

(3) The amount of funding to be requested;

(4) The date an application is expected to be submitted; and

(5) An explanation of why the project is required as a result of coastal energy activity.

(d) Allotted funds for which neither an application nor a request for extension is received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of that fiscal year.

(e) Allotted funds for which timely applications are received will remain available to the State until awarded. Allotted funds for which applications are disapproved will remain available for reapplication by the State until the end of the fiscal year or for 90 days after such disapproval or withdrawal.

§ 931.50 Application for recalled or reverted credit assistance.

(a) Funds recalled by or reverting to the Assistant Administrator under §931.49 will be available to all eligible coastal States by application according to the procedures of this section.

(b) Coastal States may submit applications for loans at any time.

(c) Priority among loan applications will be based on the priority in submitting a completed application.

(d) Under exceptional circumstances, the Assistant Administrator may grant priority to a latter application on the basis of:

- (1) Immediacy of need;
- (2) Degree of impact sought to be ameliorated;
- (3) Equity of distribution of CEIP credit assistance, and
- (4) Availability of other financing, including private sources.

§ 931.51 Contents of credit assistance application.

(a) To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for credit assistance from the Fund or for formula grants must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the assistance has been allocated within the State in accord with the intrastate allocation process described in Subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) For construction projects, as defined in the Office of Management and Budget Circular A-102, factual information necessary to evaluate the project's environmental impacts, in detail sufficient to enable the Assistant Administrator to determine whether an environmental impact statement (EIS) will be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.); and

(4) A showing that such applications for assistance have complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I).

(c)(1) Applications for credit assistance must also contain the following information:

(i) A description of the coastal energy activity causing the impacts because of which the credit assistance is sought;

(ii) A description of the new or improved public facilities or public services, required as a result of coastal energy activity, for which the assistance is sought, including costs on an annualized basis;

(iii) An estimate of current levels of utilization of public facilities and public services in the borrower's jurisdiction similar to those for which credit assistance is sought; and

(iv) Appropriate fiscal schedules, including financial and economic information, required to evaluate the payback potential on the request for credit assistance. (Such fiscal schedules will include the best available historical data on the revenues and expenditures of the borrower for five years preceding the year of application.)

(2) The information contained in the fiscal schedules described in paragraph (b)(1)(iv) of this section will be used to negotiate with the borrower the terms and conditions of the loan or guarantee agreements as described in § 931.50(c) and § 931.51(f). The fiscal schedules will be used in setting the conditions under which repayment assistance will be available, as incorporated into the terms and conditions of the loan or guarantee agreements.

(3) Even when the likelihood of eventual repayment assistance seems high, the Assistant Administrator will not normally require that the borrower raise its tax rates above or alter its tax methods from those generally prevailing when the applicant is requesting repayment assistance. However, if the tax base or revenues available to the borrower are reduced for reasons unrelated to the failure of the economic activity connected with energy development, the borrower will be expected to meet its principal and interest payments according to the loan or guarantee.

(d)(1) Applications for formula grants must contain:

(i) The adequate assurance required by § 931.97(a);

(ii) A brief description of the proposed new or improved public facility or public service sufficient to enable the Assistant Administrator to verify that the facility or service is required as a result of OCS energy activity;

(iii) Environmental impact assessment data;

(iv) Copies of necessary Federal and State permit applications;

(v) A map showing the project in relation to the coastal zone.

(2) Before awarding allotted formula grants, the Assistant Administrator will:

(i) Verify the certifications and information submitted pursuant to paragraphs (a) and (d)(1)(ii) of this section;

(ii) Determine whether an environmental impact statement (EIS) will be

required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and prepare an EIS when necessary.

§ 931.52 Special requirements for section 308(d)(1) loans.

(a) *Interest rate.* The interest rate shall be the current average market yield for outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans. The Assistant Administrator may under special circumstances approve lower interests rates. The Assistant Administrator will provide to all coastal States criteria for determining under what conditions special circumstances will be found. These criteria will be updated periodically.

(b) *Eligibility.* A loan to an otherwise eligible borrower may be made even though the fiscal schedules described in § 931.51(c)(4)(iv) or other financial information does not indicate adequate coverage for debt service. Loans may be made under section 308(d)(1) to State agencies established for the purpose of financing public facilities. Such loans shall be subject to such terms and conditions as the Assistant Administrator may prescribe.

(c) *Loan agreements.* Each loan agreement will incorporate in detail the conditions of the loan including repayment assistance described in Subpart F of this part. These conditions will be binding upon the Assistant Administrator and the borrower.

(d) *Repayment schedule.* Each loan agreement will contain a mutually agreed-upon repayment schedule, which will be tailored to the repayment ability of the borrower as indicated in the fiscal schedule described in § 931.51(b)(4)(iv) or in other financial information. This repayment schedule will set forth the borrower's annual loan service (principal and interest) payments. The borrower may accelerate payment with no prepayment penalties.

(e) *Maturity of loans.* Loans will be made for a period not to exceed the normal useful life of the project. In no event will a loan, including extensions and renewals thereof, be made with a maturity exceeding 30 years from the date of the final loan closing.

(f) *Security.* Loans made under section 308(d)(1) will be secured as determined by the Assistant Administrator and in the manner customary or legally allowed under respective State statute and local government charters and ordinances for projects of the type for which credit assistance is requested. NOAA's interest may be perfected, where appropriate, by a filing under the Uniform Commercial Code as adopted by the subject State, or, in

any jurisdiction where the Uniform Commercial Code has not been enacted, by the recording of a mortgage.

(g) *Disbursement of loan funds.* Loan funds may be disbursed on a phased basis. Approval of such loan advances will be made after receipt by the Assistant Administrator of:

(i) A favorable preliminary approving opinion of bond counsel on the validity of the proposed interim and final bond or promissory note and,

(ii) Satisfactory evidence of receipt of firm construction, service, and/or supply bids as well as compliance with the other loan conditions required to be fulfilled before disbursement. Advances or partial purchases shall be made in units of not less than 25 percent spaced so as to enable the borrower to pay incurred costs as they come due. Advances must be deposited in a bank with Federal Deposit Insurance Corporation coverage, and the balances exceeding such coverage must be collaterally secured as provided in 12 U.S.C. 265.

(h) *Interim financing on loan projects.* The terms and conditions of the interim financing are subject to prior approval. Upon request the borrower, will be provided with an appropriate letter of intent to aid the borrower in obtaining interim financing from sources other than the CEIP.

(i) *Bond counsel.* The borrower shall retain bond counsel to represent it in each loan transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

§ 931.53 Special requirements for section 308(d)(2) Federal guarantees.

(a) *Eligibility.* A borrower's legal debt will be considered eligible for guarantee under this subpart, if the Secretary of the Treasury approves such debt and it meets other requirements set forth in section 308(f).

(b) *Taxable obligations.* The interest paid on any obligation which is guaranteed under section 308(d)(2) and which is received by the purchaser of such obligation (or the purchaser's successor in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

(c) *Interest subsidy.* The Assistant Administrator may pay out of the Fund, pursuant to the terms of the bond or other evidence of indebtedness, to the coastal State or the unit of general purpose local government issuing an obligation guaranteed under section 308(d)(2) not more than the portion of the interest on such obligation as exceeds the amount of interest that would be due at a comparable rate for loans made under section 308(d)(1) at the time the obligation is guaranteed by the Associate Administrator.

(d) *Fees for guarantees.* A fee will be levied for providing a Federal guarantee. This fee will be set on the basis of the administrative costs incurred in providing and monitoring such guarantee. The fee may be waived in the event repayment assistance (as described in Subpart F of this part) is required.

(e) *Default procedures and guarantee incontestability.* If a borrower defaults on a bond or other evidence of indebtedness guaranteed under the Fund, the holder of the bond or other evidence of indebtedness may demand, pursuant to the terms of the bond or other evidence of indebtedness, payment from the Assistant Administrator of the principal and accrued interest of the obligation in accord with section 308(f)(5)(B). The validity of such a guarantee shall be considered incontestable, except when the holder of the obligation is guilty of fraud or misrepresentation or was aware of fraud or misrepresentation at the time he purchased the obligation.

(f) *Guarantee agreements.* Each obligation guaranteed under this subpart will entail agreements setting forth in detail the conditions under which the repayment assistance described in subpart F of this part will be available. These conditions will be binding upon the borrower. In addition, all provisions in the underlying documents for obligations guaranteed under section 308(d)(2) will be subject to the approval and will contain such additional provisions as the Assistant Administrator may require.

(g) *Bond counsel.* The borrower shall retain bond counsel to represent it in each guarantee transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

Subpart F—Repayment Assistance

§ 931.60 General.

This Subpart sets forth objectives, purposes and procedures for awarding various forms of repayment assistance under sections 308(d)(3) and 308(b)(5)(A).

§ 931.61 Objectives.

The objectives of the repayment assistance are to ensure that:

(a) Credit obligations will be modified and tailored according to ability to repay so that defaults can be avoided; and

(b) Net fiscal losses to the States or units of general purpose local government resulting from coastal energy activity will be minimized.

§ 931.62 Definitions.

The term "borrower" refers to an eligible coastal State, a special purpose agency of the State, or a unit of gener-

al purpose local government that has been awarded credit assistance under sections 308(d)(1) or (d)(2).

§ 931.63 Purposes.

(a) The purpose of repayment assistance under sections 308(d)(3)(A-C) is to assist a borrower who is temporarily unable to meet scheduled repayments of loans or guaranteed obligations.

(b) The purpose of a repayment grant under section 308(b) is to assist a borrower in meeting scheduled repayments of a guaranteed bond when the remedies of sections 308(d)(3)(A-C) are inadequate.

(c) The purpose of a repayment grant from a State's allotted credit assistance from the Fund under section 308(d)(3)(D) is to assist a borrower in meeting scheduled repayments of a loan or guaranteed obligation when the remedies of sections 308(d)(3)(A-C) are inadequate and formula grants are not available for that purpose. If the State's allotment is insufficient, a grant will be made from the Fund.

§ 931.64 Sources of repayment assistance.

(a) *Primary sources.* The primary sources of repayment assistance are modification of credit assistance terms and conditions under section 308(d)(3)(A), refinancing of a loan under section 308(d)(3)(B), or making a supplemental loan under section 308(d)(3)(C) to enable the borrower to repay principal and interest pursuant to the terms of a loan or guaranteed obligation.

(b) *Secondary sources.* If the borrower is unable to meet scheduled repayments by means of one or more of the primary sources of repayment assistance, and if the inability to repay results from a change in scope of the coastal energy activity or the related new population, the secondary sources of repayment assistance may be used to meet obligations. These secondary sources are the proceeds of the State's allotment of formula grants under section 308(b) and grants from the State's allotment of moneys from the Fund under section 308(e)(1), or directly from the Fund if the State's allotment is insufficient.

§ 931.65 General eligibility.

(a) A borrower is eligible for repayment assistance only if:

(1) It has been awarded a loan under section 308(d)(1) or a guarantee under section 308(d)(2); and

(2) It has submitted a report, as required under § 931.66, updating the information described in § 931.51(c)(1)(iv).

(b) A borrower does not have to be in default before qualifying for repayment assistance. The default of a borrower will nevertheless automatically

occasion review for repayment assistance by the Assistant Administrator.

§ 931.66 Reports.

After submitting its original credit assistance application, and until the full repayment of its loan or guaranteed obligation, the borrower shall submit periodically to the Assistant Administrator a report updating the information described in § 931.51(c). The frequency of submission of this report will be established by the Assistant Administrator in consultation with the borrower. This report should contain whatever new information the borrower has received and can document concerning the coastal energy activity and its likely effects on revenues and expenditures.

§ 931.67 Review for repayment assistance.

(a) At the request of the borrower or on the initiative of the Assistant Administrator, a review for repayment assistance will be carried out. Before the initiation of this review by the Assistant Administrator, the borrower must submit a report (described in § 931.66) updating the information described in § 931.51(c). The Assistant Administrator will examine the information and forecasts contained in the report, particularly those relating to the status and effects of the coastal energy activity involved.

(b) All terms and conditions of the loan or guarantee, as enumerated in the loan or guarantee agreements, will remain in effect pending the review for repayment assistance.

§ 931.68 Award of repayment assistance.

(a) It is the Assistant Administrator's intent to offer repayment assistance within 45 days after the request for repayment assistance described in § 931.67, if, pursuant to the terms and conditions of the loan or guarantee agreements, the borrower is found unable to meet its annual loan service payment or obligation under a guarantee in accord with its repayment schedule because the economic activity generated by the coastal energy activity and associated facilities have failed to provide adequate revenues.

(b) If the Assistant Administrator finds that any coastal State or unit of general purpose local government which is a borrower is unable to meet its obligations pursuant to a loan made under section 308(d)(1) of the Act because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable the State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Assistant Administrator shall, after review of the information

submitted by the State or unit pursuant to section 308(e)(3) of the Act, subject to the special conditions contained in the loan agreement, any of the following actions:

(1) Modify appropriately the terms and conditions of such loan;

(2) Refinance such loan;

(3) Make a supplemental loan to the State or unit, the proceeds of which shall be applied to the payment of principal and interest due under such loan; and

(4) Make a grant to the State or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan.

(Comment. The award of repayment assistance will be based only on an objective comparison of the information submitted in the updating report as described in § 931.66 with the terms and conditions of the original loan or guarantee agreements.)

(c) When the Assistant Administrator offers one of the courses of action in § 931.68(b)(1-4), the borrower may submit to the Assistant Administrator a formal acceptance of the recommended form of repayment assistance. In the case of a repayment grant from the proceeds of a State's formula grant under section 308(b) for a bond guaranteed under section 308(d)(2), the borrower shall submit this formal acceptance through the State agency designated under § 931.25(b)(1), and the acceptance shall include the adequate assurances as are required by § 931.97(a). The repayment assistance will take effect as soon as the Assistant Administrator receives the formal acceptance.

(d) If the formula grants allotted the State are insufficient for all the repayment grants recommended by the Assistant Administrator in a fiscal year, the State agency designated under § 931.25(b)(1) shall indicate which bonds it wishes to retire with the proceeds of available formula grants, giving priority to local bonds in accordance with section 308(b)(5)(A). Those borrowers whose bonds the State has indicated it cannot retire with the proceeds of formula grants may request repayment grants from the State's allotment of credit assistance and, when necessary, which will be awarded directly from the Fund. Borrowers in States that have no allotted formula grants may request the recommended repayment grants, which will be awarded from the State's allotment of credit assistance and, when necessary, directly from the Fund.

(e) If, after the review for repayment assistance, the Assistant Administrator determines that no repayment assistance is warranted, or if the borrower does not formally accept such assistance, the borrower will remain subject to the terms and conditions of

the loan or guarantee and to the requirements of Subpart I of this part.

§ 931.69 Appeal procedure.

(a) Whenever a dispute arises concerning the Assistant Administrator's finding made pursuant to § 931.68(a) regarding the existence of conditions which require an offer of repayment assistance the borrower may appeal the Assistant Administrator's decision to the Administrator of NOAA by submitting a request for review to the Office of the Administrator of NOAA.

(b) The Administrator of NOAA will issue a written decision on the appeal within 60 days of the borrower's request for review.

(c) The appeal procedure provided for in paragraphs (a) and (b) of this section is intended to provide a timely and impartial forum for resolving disputes concerning repayment assistance. Such appeal procedures may be initiated by the borrower, but do not expressly or by implication limit the borrower's other remedies at law or in equity. The borrower may seek appropriate judicial relief in a court of competent jurisdiction without the consent of the Assistant Administrator or the Administrator of NOAA, and without first having exhausted the appeal procedures provided in paragraphs (a) and (b) of this section.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

§ 931.70 General.

The subpart sets forth policies and requirements for awarding environmental and recreational grants to coastal States under sections 308(b)(5)(C) and 308(d)(4), and describes the objectives for awarding these moneys, the allowable uses, the sources from which they will be drawn, and the eligibility requirements.

§ 931.71 Objectives.

The objectives for providing assistance under sections 308(b)(5)(C) and 308(d)(4) are:

(a) To help coastal States and units of local government in such States to prevent, reduce or ameliorate losses in the coastal zone of valuable environmental or recreational resources when such losses result from coastal energy activity;

(b) To ensure that the person or persons responsible for these environmental or recreational losses pay for their full cost whenever possible; and

(c) To encourage the prevention of environmental or recreational losses by providing assistance only when the losses cannot be prevented through a reasonable exercise of State or local regulatory authorities.

§ 931.72 Definitions.

(a) The term "valuable environmental resource" refers to:

(1) Areas of land or water that are or have been largely in a natural state, or whose value derives primarily from ecological considerations;

(2) Important animal and plant populations and their habitat;

(3) Air, water, or noise quality; or

(4) An area that has been designated under a State's approved coastal zone management program or other regional or local plans as either an area of particular concern or area of preservation or restoration for environmental purposes.

(b) The term "valuable recreational resource" refers to areas of land or water that have characteristics making it desirable for one or more types of recreational activities, or which have been designated under a State's approved coastal zone management program, or other regional or local plans, as an area of particular concern or area of preservation or restoration use for recreational purposes. Included are areas that have important cultural, historic or archeological significance which are essential to the well being of all citizens.

(c) The term "loss" refers to any damage to or degradation of or any threat of damage to or degradation of a valuable environmental or recreational resource, including the impairment or threat of impairment of public access to that resource and any degradation or threat of degradation of the use of a resource that may result from overcrowding.

(d) A loss of a valuable environmental or recreational resource will be considered "unavoidable" if:

(1) The loss is caused by coastal energy activity and

(i) The loss can not be attributed to an identifiable person or persons; or

(ii) The costs of reduction or amelioration of the loss cannot be directly or indirectly assessed against an identifiable person or persons because no reasonable cause of action exists for the collection of money damages; or

(2) The loss is projected to occur as a result of current or future coastal energy activity and funds are sought to design or implement strategies, programs or projects to prevent, reduce or ameliorate such loss.

(e) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any State; the Federal Government; any State, regional, or local government; or any entity of any such Federal, State, regional, or local government.

§ 931.73 Allowable Uses.

(a) Assistance is provided in sections 308(b)(5)(C) and 308(d)(4) to help

States and units of local government design and implement projects to prevent, reduce or ameliorate unavoidable environmental and recreational losses resulting from coastal energy activity.

(b) Assistance for the design and implementation of projects under this subpart is intended to pay for:

(1) Protection restoration, replacement, acquisition or improvement of environmental or recreational resources to prevent, reduce, or ameliorate unavoidable environmental and recreational losses.

(2) The design and implementation of programs and strategies to prevent, reduce or ameliorate unavoidable environmental and recreational losses, including the cumulative effects of coastal energy activity.

(3) The cost differential between methods of providing a public facility required as a result of coastal energy activity which meets minimum State environmental and construction standards, and a higher cost method that further reduces an environmental loss.

§ 931.74 Eligibility.

(a) To be eligible for allotments and assistance under sections 308(b)(5)(C) and 308(d)(4), a coastal State must meet the basic eligibility requirements of Subpart C of this part.

(b) A unit of general purpose local government may apply for financial assistance from its State.

§ 931.75 Allotment of Section 308(d)(4) Environmental-Recreational Grants.

(a) Funds available in any fiscal year under subsection 308(d)(4) will be allotted among coastal States according to the procedures of this section and will consist of:

(1) Funds appropriated for section 308(d)(4) purposes for that fiscal year;

(2) Funds allotted in previous fiscal years under section 308(d)(4) reverting to the Assistant Administrator under § 931.76;

(3) Funds allotted in previous fiscal years under section 308(d)(4) and recalled under § 931.97 because such funds were expended for unauthorized uses; and

(4) Money from any other source available for section 308(d)(4) purposes.

(b) *Allotment Computation.* Available funds will be allotted first among those eligible coastal States that are receiving in that fiscal year less than \$400,000 in section 308(b) formula grant allotments. This allotment will be carried out according to the procedures for allotting credit assistance under § 931.47.

(1) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is less than 5 percent of the amount available, such State's allotment will

be raised to 5 percent of the amount available.

(2) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is greater than 25 percent of the total amount available, then such State's allotment will be reduced to 25 percent of the amount available.

(3) If after the calculations in paragraphs (b)(1) and (2) of this section the amount that would be required to be allotted exceeds the amount available, then each State's allotment will be reduced proportionally until the total allotment equals the amount available.

(4) If after the calculations in paragraphs (b)(1) and (2) of this section the amount that would be required to be allotted is less than the amount available, then such unallotted funds will be available for allotment according to the procedures of § 931.47 among all eligible coastal States.

§ 931.76 Reversion of allotted funds.

(a) Allotted funds for which applications are not received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of such fiscal year.

(b) Allotted funds for which applications are received within the fiscal year in which such funds were allotted will remain available to the State until awarded. Funds for which timely applications are disapproved or withdrawn will remain available for reapplication by the State for 60 days after such disapproval or withdrawal. If a substitute application is not submitted for these funds before the 60-day time period expires, such funds will revert to the Assistant Administrator at the end of the fiscal year or at the end of the 60-day period whichever occurs last.

(c) *FY 1978 Funds.* Funds allotted in fiscal year 1978 under section 308(d)(4) will be treated as if allotted in fiscal year 1979 and will be subject to the requirements of this section.

§ 931.77 Application procedures.

(a) An eligible coastal State may apply for financial assistance for the purposes set forth in § 931.74 as soon as it is notified of the amount of its 308(b) and 308(d)(4) allotments. To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for grants under sections 308(b) and 308(d)(4) must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the assistance has been allocated within the State in accord with the in-

trastate allocation process described in subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) A brief description of the proposed activity or activities sufficient to enable the Assistant Administrator to verify that the activity or activities would prevent, reduce, or ameliorate an unavoidable loss of a valuable environmental or recreational resource pursuant to this subpart including an indication of how the loss is unavoidable as defined in § 931.72.

(4) For construction projects, as defined in Office of Management and Budget Circular A-102, factual information necessary to evaluate the project's environmental impacts, in detail sufficient to enable the Assistant Administrator to determine whether an environmental impact statement (EIS) will be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.); and

(5) A showing that such applications for assistance have complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I).

(c) Application for section 308(b) grants must also contain such adequate assurances as are required by § 931.97(a).

(d) It is the intent of the Assistant Administrator that completed requisitions and applications will be processed within 45 days of completion of the required A-95 reviews, unless the Assistant Administrator determines that an environmental impact statement is required.

§ 931.79 Limitations.

The proceeds of grants awarded under sections 308(b) and 308(d)(4) may not be used:

(a) For the prevention, reduction, or amelioration of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, rental, or conversion to other uses of such resource by a State agency or unit of local government when such sale, lease rental or conversion occurred after July 26, 1976;

(b) To pay for that part of the cost of a project designed to prevent, reduce, or ameliorate the loss of a valuable environmental or recreational resource, which is incommensurate with the value of the loss;

(c) To pay for that part of the cost of a project designed to prevent, reduce or ameliorate the loss of an environmental resource which can be

paid for with funds readily available from any other Federal program.

Subpart H—Lateral Seaward Boundaries

§ 931.80 General.

For the calculations of formula grant allotments under § 931.76, Outer Continental Shelf acreage and production shall be considered adjacent to a particular coastal State if such acreage and production lie on that State's side of the extended lateral seaward boundaries of that State. These extended lateral seaward boundaries of a coastal State shall be determined by delimitation lines established by the Assistant Administrator according to the procedures of this subpart. These delimitation lines are to be established solely for determining a State's adjacency to Outer Continental Shelf acreage and production for the purposes of section 308(b), and they are not intended to have application under any other law or treaty of the United States.

§ 931.81 Establishment of delimitation lines when agreements exist between States.

If a lateral seaward boundary extending to a State's seaward boundary (see the Submerged Lands Act, 43 U.S.C. 1301(b) and 1312) has been clearly defined or fixed by an inter-State compact, agreement, or judicial decision as of July 26, 1976, a delimitation line extending the lateral seaward boundary through the Outer Continental Shelf shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement, or decision. A copy of all such compacts, agreements, or decisions must be submitted to the Assistant Administrator before calculations of State allotments are made and before March 4, 1977.

If a portion of a lateral seaward boundary has been clearly defined or fixed by an inter-State compact, agreement or judicial decision as of July 26, 1976, a delimitation line shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement or decision to the extent that such principles are applicable.

§ 931.82 Establishment of delimitation lines when no agreements exist between States.

If no lateral seaward boundary, or any portion thereof, has been clearly defined or fixed by inter-State compact, agreement, or judicial decision, a delimitation line extending from the State's seaward boundary through the Outer Continental Shelf shall be established in the following manner:

(a) If, on or before August 4, 1977, a lateral seaward boundary to the

State's seaward boundary is delimited or defined by an inter-State compact or agreement, the Assistant Administrator will establish a delimitation line through the Outer Continental Shelf based upon the same principles used to delimit or define the lateral seaward boundary in such compact or agreement. A lateral seaward boundary established by inter-State compact or agreement may be based on any principles which are mutually acceptable to the States involved. When such a boundary requires a measurement from a baseline, that baseline will be as defined in § 931.84(a). The lateral seaward boundary delimited or defined by such a compact or agreement, must be appropriately documented to the Assistant Administrator no later than August 4, 1977. Appropriate documentation shall include data sufficient to define the lateral seaward boundary and may include dimensionally stable base maps, geographical positions, azimuths, computations, and written descriptions.

(b) If a lateral seaward boundary is not defined or delimited by compact or agreement on or before August 4, 1977, delimitation lines will be established by the Assistant Administrator. The Assistant Administrator will extend this time period up to February 4, 1978, if the Governors of the States concerned each request such an extension. The Assistant Administrator may also at his/her discretion extend the time period for other delimitation lines which may be affected by the one for which an extension has been requested. Prior to establishing these delimitation lines, the Assistant Administrator will allow an additional 6-month period during which time the States failing to delimit or define a lateral seaward boundary may submit written arguments in support of their respective positions. After expiration of the period allowed for submission of arguments by States, the Assistant Administrator will establish the required delimitation lines according to the applicable principles of law. The procedures of this paragraph may be invoked at any time after these regulations become effective if the States concerned jointly seek a determination by the Assistant Administrator.

If the lateral seaward boundary is a matter in litigation prior to the time of delimitation by the Associate Administrator, such delimitation may be deferred by the Assistant Administrator until a final judicial decision is rendered.

(c) If after July 26, 1976, a judicial decision is rendered to clearly define or fix a lateral seaward boundary such a decision may be used by the Assistant Administrator in establishing a line of delimitation.

PROPOSED RULES

§ 931.83 Establishment of delimitation lines under later compacts or agreements.

If, after February 4, 1977, two or more States enter into or amend an interstate compact or agreement, in order to clearly define or fix a lateral seaward boundary, delimitation lines extending such a boundary through the Outer Continental Shelf will be based on principles used to delimit or define the lateral seaward boundary in such compact or agreement. For the purpose of calculating formula grant allotments under Subpart K, the Assistant Administrator also may accept agreements between States on the proportional sharing of formula grant funds with a specified area, without the need for agreement on a specific line. However, delimitation lines so extended or altered, and allotments so calculated, will not affect grants made previously in accord with calculations under Subpart K.

§ 931.84 Procedures for defining delimitation lines by equidistance principles.

(a) In the event that the Assistant Administrator establishes a line of delimitation based on measurement from a baseline, that baseline will be the intersection of the National Ocean Survey (NOS) low water datum of reference with the land, as described and published by the NOS on large scale nautical charts of the area, as modified by the application of the principles of the Convention on the Territorial Sea and the Contiguous Zone, as interpreted by the Ad Hoc Committee on U.S. Coastline Delimitation.

This committee, which has the responsibility to apply principles of international law and the Convention on the Territorial Sea and the Contiguous Zone in delimiting the territorial sea and the contiguous zone of the United States, will be charged with the identification of the baseline, including closing lines, on NOS charts as required to establish the baselines.

(b) If delimitation lines established by the Assistant Administrator are based on a measurement from the baseline, they shall be delineated by the NOS, which shall determine the geographic positions of these points by either graphical or analytical procedures, and document the delimitation lines for review and comment by the above Ad Hoc Committee and final approval by the Assistant Administrator.

§ 931.85 Formula grants impounded for disputed areas.

(a) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage and production in disputed areas, as determined by the Assistant Administrator, will be impounded in the Treasury of the

United States until such time as the required delimitation lines have been established by the Assistant Administrator using the procedures outlined in § 931.82.

(b) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage, production and landings in areas disputed between the Federal Government and the State will be impounded in the Treasury of the United States until such time as the issue is resolved.

Subpart I—General Provisions**§ 931.90 Allowable costs.**

(a) Allowable costs will be determined in accord with Federal Management Circular 74-4, Cost Principles Applicable to Grants and Contracts with State and Local Governments (34 CFR 255), the grant/loan agreement, and with the unique requirements of the Coastal Energy Impact Program. Specifically, project costs must:

(1) Be necessary and reasonable for proper and efficient administration of the program, not be a general expense required to carry out the overall responsibilities of States or units of local governments;

(2) Be authorized or not prohibited under State or local laws or regulations;

(3) Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items;

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the recipient is a part;

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(6) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period; and

(7) Be net of all applicable credits.

(b) Applications for assistance under this part, for projects or programs to provide new or improved public facilities or for construction projects to prevent, reduce, or ameliorate unavoidable environmental or recreational losses will be subject to the following additional requirements.

(1) Design and performance standards must conform to professionally recognized national standards. Costs must be reasonable and comparable to the cost of similar work awarded through open competitive bidding in the geographic area of the project.

(2) Compensation for engineering, architectural, or similar services shall not be based on a cost plus a percentage-of-cost.

(3) The following will be allowable projects costs when necessary and reasonable for the completion of project or programs assisted under this part.

(i) Land acquisition (including less-than-fee simple), easements, and rights-of-way.

(ii) Architectural, engineering, and other necessary technical service fees.

(iii) Construction expenses, including, but not limited to, construction materials, fixtures, appurtenances, and fixed machinery and equipment.

(v) Site preparation and improvement.

(vi) Capitalized interest during construction for a project in which it is necessary or advantageous for the recipient to borrow funds to finance construction costs and where State law permits such a loan. (This is an allowable cost for section 308(d) (1) and (2) credit assistance only.)

(vii) Capitalized interest during development, only when a section 308(d) loan or guarantee has been made for the project. (The allowable amount is limited to that which is required to meet interest payments after the project is operating but before income is sufficient to provide such payment. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such interest payments.)

(viii) Initial public service expenses (operating costs) including supply inventories, salaries and utilities, only when a section 308(d) loan or guarantee has been made for the project. (The allowable amount is limited to that which is required to meet these public service expenses after the project is operating but before income is sufficient to provide for such services. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such public service expense.)

(4) The cost of activities conducted, or assets acquired, prior to approval of an assistance application are allowable costs only when specifically provided for in the grant or loan or agreement and to the extent that they meet the requirements set forth in paragraph (a) of this section, OMB Circular A-102 and FMC 74-4. For nonconstruction projects, such costs must have been incurred not more than three months prior to the grant start date. Purchase options for land and materials essential to the project or program may be an allowable project cost.

(5) Purchase of construction related equipment, such as dump trucks, excavation equipment and other movable equipment, will be allowable only when specifically authorized in writing.

(6) The acquisition of movable equipment essential for the maintenance of new or improved public facilities or projects that prevent, reduce or ameliorate unavoidable environmental or recreational losses is allowable.

§ 931.91 Administrative procedures.

Administrative procedures for grants and credit assistance are based to the maximum extent practicable upon Office of Management and Budget Circular, A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" (34 CFR Part 256).

§ 931.92 Compliance with OMB Circular A-95 requirements.

(a) Preapplications, if used, and applications, for assistance for public facilities and public services and for environmental and recreational grants for construction projects are subject to the Project Notification and Review System established by Office of Management and Budget Circular No. A-95 (Part I), as implemented by regulations promulgated by NOAA, 15 CFR 905.

(b) Applications for assistance for planning under sections 308(c) and 308(b)(5)(C) and for nonconstruction projects or programs for environmental/recreational purposes under sections 308(b)(5)(C) and 308(d)(4) are not subject to Part I of OMB Circular No. A-95 if a memorandum of agreement for coordinating planning under section 308 has been executed between the state agency designated under § 931.26(a)(1) and the appropriate areawide clearinghouses in the State's coastal zone pursuant to Part IV, Attachment A, of OMB Circular No. A-95.

§ 931.93 Other Federal requirements.

Compliance with all other Federal statutory provisions and regulations which are applicable to Federal assistance programs and recipients of such assistance is a condition of CEIP assistance.

§ 931.94 Environmental Impact Statements.

(a) Under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and the guidelines 40 CFR 1500.1 et seq., the Assistant Administrator will conduct an environmental impact assessment on each proposed use of assistance for construction projects under Subparts E and G to determine whether an environmental impact statement (EIS) will be required. Such assessment will be based on threshold criteria which will be provided in OCZM Environmental Guidelines.

(b) Assistance under Subparts D (Planning) and F (Repayment Assis-

ance), nonconstruction projects under Subparts E and G as well as the activities listed below may be treated as separate projects for the purpose of environmental review and will not require an environmental impact analysis (EIA).

(1) Environmental studies or assessments.

(2) Administrative costs as provided for under § 931.33(2)(3).

(3) Eligible public service projects not involving physical development activity (e.g., employment, crime prevention, child care, health, drug abuse, education, welfare, or recreational needs).

(4) Eligible maintenance projects that maintain the status quo or make only minor improvements (e.g., community clean-up, tree trimming, maintaining vacant lots, boat ramps and street lighting).

(5) Public facilities and improvements which enhance or complete facilities already in place, or which replace or reconstruct without change in the use or service capacity of the item. Examples of the former are: landscaping, street furniture, equipping established parks, playground, tot lots, and passive recreation areas. Examples of the latter are: Replacement or reconstruction of streets, curbs and sidewalks, and modernization of hospitals, schools and modification of buildings for the elderly or handicapped.

(6) Rehabilitation of buildings and improvements provided that:

(i) Unit density is not changed more than 20%;

(ii) The project does not involve change in use from residential to non-residential use or from one class of non-residential use to another class of use;

(iii) The cost of rehabilitation is less than 75% of the total cost of replacement after rehabilitation; and

(iv) Eligible repair or replacement projects that do not change the use of the item repaired (e.g., water and sewer system, curbs and sidewalks, modification to buildings for the elderly and handicapped, repaving streets, and compliance with code enforcement to bring properties into compliance with health or zoning codes).

(c) Applicants for financial assistance to carryout activities or projects for which environmental assessments are not required are not relieved from compliance with historical preservation requirements, wetland or floodplain protection standards established by the OCZM Environmental Guidelines.

(d) All other projects under Subparts E and G of this part will require environmental review. Initial data and information on the environmental impacts of a proposed project will be provided by the potential recipient of as-

sistance according to the OCZM Environmental Guidelines. A regional or programmatic EIS on a group of similar or related projects may be prepared if appropriate.

(e) If, before receiving notice of its allotment under Subpart E of this part, a State wishes to seek an advance determination as to whether an EIS will be required for a proposed project, such State may submit the information required under § 931.48(a)(5) to the Assistant Administrator. It is the intent of the Assistant Administrator to review the information submitted and make a determination within 45 days of receipt of such information.

§ 931.95 Records.

(a) All initial recipients of financial assistance under section 308 shall keep and preserve, and shall require each unit of local government to which it passes the assistance to keep and preserve, detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. All recipients shall also keep and preserve such full written financial records, accurately disclosing the amount and the disposition of the assistance, together with the amounts and disposition of other funds applied to the project, program, or other undertaking, as shall adequately establish compliance with the requirements of section 308, the terms and conditions upon which such financial assistance was made, and the standards for financial management systems contained in Attachment G to Office of Management and Budget Circular A-102. Such records shall be retained until:

- (1) Completion of the project, program, or other undertaking for which a grant was made or used, and thereafter for a period of at least 3 years; or
- (2) Full repayment of a loan or guaranteed indebtedness for which such financial assistance was provided, and thereafter for a period of at least 3 years.

§ 931.96 Audit.

The Assistant Administrator, the Secretary of Commerce, any designee of the Assistant Administrator or Secretary of Commerce, and the comptroller General shall have access for purposes of audit and examination to any records, books, documents, and papers which belong to, or are used under this part or controlled by, any recipient of the assistance or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if such financial assistance is being or was used in accordance with section 308, the terms and conditions upon which such finan-

cial assistance was made. Office of Management and Budget Circular A-102, and Federal Management Circular 74-4.

§ 931.97 Recovery of funds.

This section sets forth requirements and procedures to ensure that grant proceeds received by States may be recovered by NOAA if such proceeds have not been expended or obligated for the purposes and activities covered by the grant award approved program activities and budget, and if 308(b) grant proceeds have not been expended or obligated by the State before the close of the fiscal year immediately following the fiscal year of project award.

(a) *Adequate assurances.* (1) Each requisition for the proceeds of section 308(b) grants submitted by a State under Subparts D, E, F, or G of this part shall contain a written statement that:

(i) The State will repay to the United States the amount of an awarded grant which has been determined by the Assistant Administrator not to have been expended or obligated by the State for purposes other than those allowed by this Part; and

(ii) The State will repay to the United States the amount of any grant which has been determined by NOAA not to have been expended or obligated by the State before the close of the fiscal year immediately following the fiscal year in which the grant proceeds were awarded.

(b) *Procedures for the recovery of funds.* (1) Upon receipt from NOAA of a written request for repayment which contains a finding that the proceeds of a grant received by the State have been expended or obligated by the State for purposes other than those set forth in the grant award, and, in the case of 308(b) grant proceeds, if the funds have not been expended or obligated before the close of the fiscal year immediately following the fiscal year in which the grant proceeds were awarded, such State shall provide a written response within 15 days to either refute or admit such findings.

(2) NOAA shall make a determination that repayment by the State will or will not be required, and shall notify the State of this determination no later than 45 days from the receipt by the State of the request for repayment described in paragraph (b)(1) of this section.

(3) If NOAA determines that repayment is required, the State shall have 30 days from the date of receipt of such determination to file a request for reconsideration with NOAA or 60 days from the date of receipt of such determination to make a repayment by check in the amount stated in such determination.

(i) If the State's request for reconsideration is denied, the State shall have 15 days from the date of such denial to make a repayment by check in the amount determined to be owed to the United States.

(ii) If, as a result of the State's request for reconsideration, NOAA modifies its determination of the amount required to be repaid by the State, such State shall have 15 days from the date of such modification to make the repayment, if any, by check.

(4) If no repayment is received within the time period established by paragraph (b)(3) of this section, NOAA shall take necessary action to recover the amount due. Methods of recovery may include, but are not limited to:

(i) The modification or termination of a grant being received by such State under section 308(b);

(ii) The modification or termination of financial assistance under sections of the Act other than section 308(b);

(iii) The withholding of future financial assistance to the State under any section of the Act; and

(iv) The modification or termination of financial assistance being received by such State under other programs administered by the Department of Commerce, or the withholding of future financial assistance to such State under these programs.

(5) Actions undertaken under paragraph (b) of this section shall not in any way prejudice any rights of NOAA to pursue such other remedies as may be legally available and appropriate under the circumstances, including the referral of the claim against the State to the Department of Justice.

(c) If a State has received a written request for repayment under § 931.97(b)(1) NOAA may require such additional assurances as it finds necessary to protect the interests of the United States in the making of grants to the State.

§ 931.98 Coordination with other Federal agencies.

(a) No financial assistance for studying and planning provided under sections 308(b)(5)(B) and 308(c)(1) for public facilities and public services provided under sections 308(b)(5)(B) and (d)(1) and (2), or for environmental and recreational projects provided under sections 308(b)(5)(B) and (d)(4) shall be awarded or disbursed if other Federal funds are readily available for such purposes, unless the Assistant Administrator is assured that the Federal assistance to be received under section 308:

(1) Is to be used in addition to, and not in lieu of, any Federal funds which any coastal State or unit of local government may obtain under any other law; and

(2) Is not duplicative of other funding assistance.

(b)(1) The term "joint funding" means the coordination of multiple Federal assistance under the authority and provisions of the Joint Funding Simplification Act of 1974 (Pub. L. 93-510) in support of and consistent with the CEIP.

(2) When assistance from other Federal programs is insufficient to cover a project or when combinations of assistance from multiple Federal programs are appropriate and beneficial, States and units of local government may request joint funding by the CEIP and other Federal programs in accordance with OMB Circular A-111, 41 FR 32040.

Subpart J—Intrastate Allocation of Financial Assistance

§ 931.110 General.

This subpart sets forth policies, requirements, and criteria required by sections 308 (e)(2) and (g)(2) and related to the intrastate allocation of financial assistance provided under section 308.

§ 931.111 Objective.

The objective of these requirements is to assure, to the maximum extent practicable, that section 308 assistance allotted to coastal States is distributed among units of local government in amounts which are proportional to need and in a manner which is equitable and expeditious.

§ 931.112 Intrastate allocation.

Each coastal State must establish a process to allocate its allotted section 308 (b), (c)(1), (d) assistance among State agencies and units of local government based on need for such assistance. This process may be periodically reviewed by the Assistant Administrator to determine whether its application results in a distribution of assistance which, to the maximum extent practicable, is proportional to need. States may amend or modify their intrastate allocation process subject to approval by the Assistant Administrator. The form of the allocation process will depend on the amount of assistance allotted to the State.

(a) States that receive in a fiscal year an allotment of \$1 million or more in grants under sections 308 (b), (c)(1) and (d)(4) must develop an intrastate allocation process for that fiscal year's allotment. Such process must be approved by the Assistant Administrator and must:

(1) Indicate the State agency designated under § 931.25 which will assume the lead role for administering the process;

(2) Describe the methods and procedures used to assure direct and effective

tive participation by affected State agencies and units of local Government throughout the development and implementation of the allocation process:

(3) Describe the methods to be used to allocate financial assistance and to evaluate and select projects based on criteria which include immediacy or severity of impacts, the fiscal capacity of units of local Government, and protection of the environment;

(4) Assure that information on the allocation of financial assistance is available to the public throughout the allocation process;

(5) Stipulate reasonable time limits for the allocation of financial assistance; and

(6) Establish a timely procedure by which units of local government may appeal to the State:

(i) the results of its allocation decisions; or

(ii) whether the State complied with the intrastate allocation process described in this section and approved by the Assistant Administrator.

(b) Those States which receive an allotment of less than \$1 million in 308 grants in any fiscal year must provide under sections 308 (b), (c)(1), (d)(4) an allocation process which will be submitted along with applications and requisitions for section 308 assistance. This process will not be subject to prior approval of the Assistant Administrator. The submission by the State must describe:

(1) The methods used to evaluate and select projects and to allocate financial assistance.

(2) The methods used to provide for formal notification of, direct consultation with, and comments by, affected State agencies and units of local government in the allocation of all 308 funds.

(c) Eligible U.S. Territories are exempt from the requirements to provide an intrastate allocation process.

§ 931.113 Forms of assistance.

To the maximum extent practicable and in accord with the intrastate allocation process established pursuant to § 931.112:

(a) States that receive grants under section 308 for purposes specified in Subparts D and G of this part must pass this assistance through to State agencies and units of local government in the form of grants;

(b) States that receive grants under section 308 for purposes specified in Subparts E and F of this part must pass this assistance through to State agencies and units of general purpose local government in the form of grants;

(c) States that are allotted credit assistance under section 308 (d)(1) and (d)(2) must pass this assistance

through to State agencies and units of general purpose local government using one of the following methods:

(1) State agencies may borrow to provide public facilities and public services needed to meet either State or local needs;

(2) State agencies may borrow to reloan or to grant this assistance to units of general purpose local government for public facilities and public services needed to meet local needs; or

(3) State agencies and units of general purpose local government may submit applications to the State to borrow from the Fund to provide needed public facilities and public services.

§ 931.114 Appeal to Assistant Administrator.

(a) A unit of local government may appeal to the Assistant Administrator to determine whether the State complied with the approved intrastate allocation process described in § 931.112 and approved by the Assistant Administrator. Such an appeal must be made within 30 days after the unit of local government has exhausted the appeal procedure described in § 931.112. Such an appeal will be limited to the application of the State's process and the Assistant Administrator may require additional information necessary to make an objective review and finding. The Assistant Administrator will notify the State and unit of local government of his/her findings within 45 days of the receipt of the appeal.

(b) If the Assistant Administrator finds that the State has not substantially complied with the approved process, section 308 assistance will be withheld until the State reallocates the assistance in accord with the approved process.

Subpart K—Allotment of Section 308(b) Formula Grants

§ 931.120 General.

The purpose of this subpart is to describe the procedure for allotting among eligible coastal States moneys appropriated in any fiscal year for the purposes of section 308(b).

§ 931.121 Definitions.

(a) The term "first landed" in a particular coastal State refers to oil and natural gas produced from the OCS that is first unloaded from tankers or barges within that State, or is brought to shore in pipelines that first touch nonsubmerged land and create a significant impact in that State.

(b) The term "adjacent" is defined in § 931.80.

§ 931.122 OCS Regions.

For purposes of this subpart, the coastal States will be assigned to OCS regions as follows:

(a) Region I: Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) Region II: Alabama, Florida, Louisiana, Mississippi, and Texas.

(c) Region III: California, Hawaii, Oregon, and Washington.

(d) Region IV: Alaska.

§ 931.123 Impacted State.

(a) For purposes of this subpart, the Assistant Administrator will determine that a State "is being or will be impacted by OCS energy activity" as follows:

(1) At the end of each fiscal year, all OCS energy activity which took place in that fiscal year will be identified.

(2) After identifying such OCS energy activity, the Assistant Administrator will identify those impacts which occurred in that fiscal year from such activity and will project those impacts that will occur as a result of such activity. Such impacts include:

(i) Any significant loss, damage, degradation of or impairment of access to any valuable recreational or environmental resource or any threat of such loss, damage, degradation, or impairment;

(ii) Any changes or threat of changes in the social, governmental or economic infrastructure in the coastal zone which would necessitate the provision of new or improved public facilities or public services;

(iii) Any demographic change or threat of change in the coastal zone which would necessitate the provision of new or improved public facilities or public services or which would degrade the quality of the human environment;

(iv) Any other adverse consequences in the coastal zone resulting from OCS energy activity that in the Assistant Administrator's determination may be remedied by granting funds under this subpart.

(b) The projection of impacts that "will" occur necessarily implies that the Assistant Administrator make anticipatory judgements that may not be supported by hard data. The Assistant Administrator will decide which States "will be impacted" within the context of the purposes for which the CEIP was established and will base the analysis of future impacts on the immediacy of impact, equity in distribution of appropriated funds, and the reasonable need for such funds.

§ 931.124 Allotment of formula grants

(a) *Eligibility.* No coastal State will receive an allotment under this subpart unless such State meets the basic eligibility requirements of Subpart C. The allotment a State receives will be the result of the calculations in paragraphs (b) through (f).

(b) *Formula Amount.* The amount payable in a fiscal year to any eligible coastal State under the formula specified in section 308(b)(2) shall be the formula amount and will be computed by the following equation:

$$\begin{aligned} \text{Formula Amount} = & \left[\frac{1}{2} \frac{A}{A_T} \times TA \right] \\ & + \left[\frac{1}{2} \frac{P}{P_T} \times TA \right] \\ & + \left[\frac{1}{2} \frac{L}{L_T} \times TA \right] \end{aligned}$$

A = The amount of OCS acreage which is adjacent to such eligible coastal State and is newly leased by the Federal government in the fiscal year immediately preceding the fiscal year in which the allotment is made.

A_T = The total amount of OCS acreage which is adjacent to all eligible coastal States and is newly leased by the Federal government in such immediately preceding fiscal year.

P = The volume of oil and natural gas produced from OCS acreage adjacent to such eligible coastal State in such immediately preceding fiscal year.

P_T = The total volume of oil and natural gas produced from OCS acreage adjacent to all eligible coastal States in such immediately preceding fiscal year.

L = The volume of oil and natural gas produced from OCS acreage which is first landed in such State in such immediately preceding fiscal year.

L_T = The total volume of oil and natural gas produced from the OCS which is first landed in all eligible coastal States in such immediately preceding fiscal year.

TA = The total amount of funds appropriated for section 308(b) purposes in the fiscal year for which the allotment is made.

(c) *Two Percent Amount.* The Assistant Administrator will allot in a fiscal year to any eligible coastal State an amount equal to 2% of the total amount appropriated in such fiscal year for section 308(b) purposes if:

(1) Such State's formula amount is less than 2 percent, but greater than 2 percent, of the total amount appropriated in such fiscal year; or

(2) Such State's allotted formula amount is zero; and

(i) The Assistant Administrator determines that such State is being or will be impacted by OCS energy activity;

(ii) The Assistant Administrator determines that such State will be able to expend or commit the proceeds of such allotment in accordance with the purposes set forth in section 308(b)(5); and

(iii) Any other eligible coastal State in the same OCS region will be allotted a formula amount greater than zero.

(d) *Proportional Reduction.* If after calculating the formula amount and the 2 percent amount the total amount of funds that would be required to be allotted is greater than the total amount of funds appropriated in a fiscal year for section 308(b) purposes, the Assistant Administrator will deduct from each coastal State whose formula amount exceeds 2 percent of the amount appropriated an amount equal to the product of:

(i) The amount by which the total amount that would be required to be allotted to all eligible coastal States exceeds the total amount of funds appropriated in such fiscal year for section 308(b) purposes multiplied by;

(ii) A fraction, the numerator of which is the formula amount for such State reduced by an amount equal to 2

percent of the total amount appropriated and the denominator of which is the sum of those formula amounts that exceed 2 percent of the amount appropriated, reduced by an amount equal to the product of 2 percent of the total amount appropriated multiplied by the number of coastal States whose formula amount exceeds 2 percent of the amount appropriated

(e) *Maximum Amount.* If after the calculations performed in paragraphs (a) through (d) of this section any coastal State would receive an allotment which is greater than 37½ percent of the amount appropriated for such fiscal year, the Assistant Administrator shall reduce the amount of such States allotment to 37½ percent of such appropriated amount.

(f) *Redistribution.* Any amount not allotted by virtue of the application of paragraph (e) of this section shall be reallocated proportionally among those coastal States which at this point in the calculation receive an allotment greater than 2 percent but less than 37½ percent of the amount appropriated. For purposes of this paragraph "reallocated proportionally" means allotment in accordance with the provisions of paragraph (b) of this section except that only those States which receive an allotment greater than 2 percent and less than 37½ percent shall participate in the calculations described in that paragraph.

§ 931.125 Recall of formula grants

(a) Funds allotted under this subpart will remain available for application by the recipient coastal State until September 30, 1988. Funds not applied for by this date will be returned to the United States Treasury.

(b) Funds allotted under this subpart and which have been awarded to a State must be expended or obligated by the State by the end of the fiscal year immediately following the fiscal year in which such funds were awarded or be subject to recovery under § 931.97.

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