

a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

16. Section 930.121 is proposed to be amended by revising paragraph (c) as follows:

§ 930.121 Consistent with the objectives or purposes of the Act.

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(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. An alternative shall not be considered unless the State submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

17. Section 930.125 is proposed to be amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and by adding a new paragraph (b) as follows:

§ 930.125 Notice of appeal and application fee to the Secretary.

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(b) The appellant's notice of appeal shall include a statement briefly explaining the appellant's argument for each ground for appeal of the State agency's objection under § 923.121, as well as any procedural/threshold arguments regarding the State's objection. Grounds for appeal or issues concerning the State agency's objection not identified in the appellant's notice of appeal shall not be considered by the Secretary and will not be considered part of the Secretary's decision record.

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18. Section 930.127 is proposed to be revised as follows:

§ 930.127 Briefs and Supporting Materials.

(a) Within 30 days of the filing of the Notice of Appeal, the appellant shall submit to the Secretary a brief

accompanied by all such supporting documentation and material as the appellant deems necessary for the consideration of the Secretary. Within 30 days of the State's receipt of the Appellant's brief and supporting documentation and material, the State shall submit to the Secretary a brief and all such supporting documentation and material the State deems necessary for the consideration of the Secretary.

(b)(1) Both the appellant and State agency shall send four copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910, one of which must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) At the same time that materials are submitted to the Secretary, the appellant and State agency shall serve at least one copy of their briefs, supporting materials and all requests and communications to the Secretary and on each other.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party and on GCOS. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with time periods specified in this subpart for filing with the Secretary or without certification of service on the other party may be disregarded and not entered into the Secretary's decision record of the appeal.

(c)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The Secretary determines the content of the appeal decision record. Briefs and supporting materials submitted by the State agency and appellant, public comments and the comments of interested Federal agencies usually comprise the decision record of an appeal. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials

addressing and/or relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in 930.127(a) and (c)(1) as necessary.

(4) Unless additional briefs are requested by the Secretary under paragraphs (1) or (2), the parties shall not submit any briefs or materials in addition to those described in paragraph (a) of this section, and any unrequested briefs or materials may be disregarded and not entered into the Secretary's decision record of the appeal.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. The State agency bears the burden of submitting evidence in support of any alternatives proposed by the State agency or submitted to the Secretary by the State agency during the conduct of the appeal.

(e) The Secretary may extend the time for submission of briefs and supporting materials only in the event of exigent or unforeseen circumstances.

(f) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

19. Section 930.128 is proposed to be revised as follows:

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal and payment of application fees by publishing a Notice in the **Federal Register** and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal of no less than 30 days to run concurrently with the opportunity to comment provided to interested Federal agencies. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section and may be provided in the same Notice as the Notice of the filing of the appeal.

(c)(1) Notice of the opportunity for interested Federal agencies to comment