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Monday  
February 4, 1991

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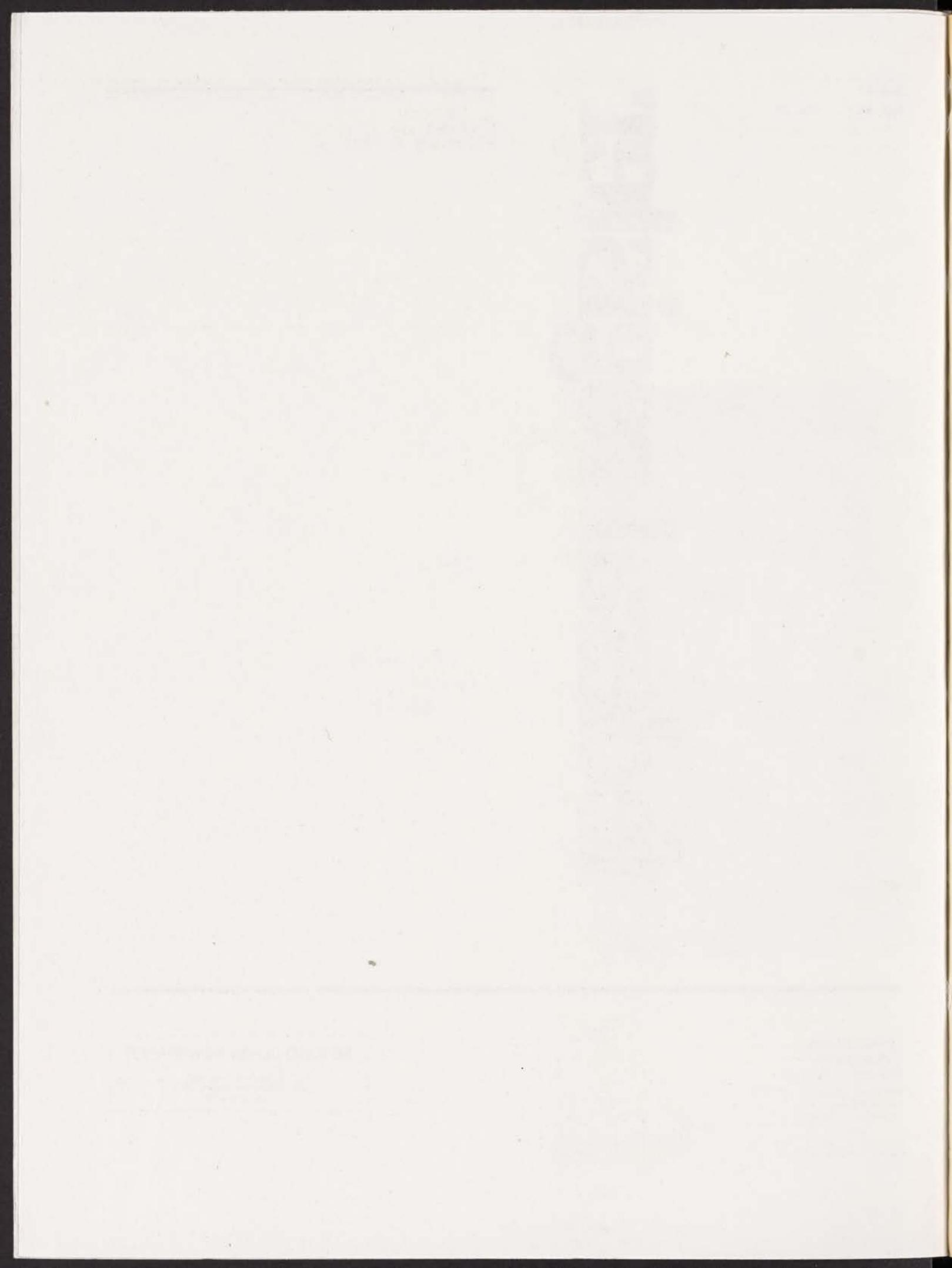
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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### LOS ANGELES, CA

**WHEN:** March 4, at 9:00 a.m.  
**WHERE:** Federal Building,  
 300 N. Los Angeles St.  
 Conference Room 8544  
 Los Angeles, CA

**RESERVATIONS:** 1-800-726-4995

### SAN DIEGO, CA

**WHEN:** March 5, at 9:00 a.m.  
**WHERE:** Federal Building,  
 880 Front St.  
 Conference Room 45-13  
 San Diego, CA

**RESERVATIONS:** 1-800-726-4995

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 271

[Docket No. RM80-53]

#### Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; order of the Director, OPFR.

**SUMMARY:** Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices

prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March, April, 1991. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

**EFFECTIVE DATE:** February 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Garry L. Penix, (202) 208-0622.

#### SUPPLEMENTARY INFORMATION:

##### Order of the Director, OPFR

Issued January 29, 1991.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March, April, 1991, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the

Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February, 1991, are found in the tables in §§ 271.101 and 271.102.

#### List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

#### PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717-717w; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432.

#### § 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for February, March, April 1991, in Tables I and II.

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in—		
			February 1991	March 1991	April 1991
B	102	New Natural Gas, Certain OCS Gas <sup>1</sup>	\$6.056	\$6.090	\$6.124
C	103(b)(1)	New Onshore Production Wells <sup>2</sup>	3.682	3.691	3.700
E	105(b)(3)	Intrastate Existing Contracts	5.723	5.751	5.779
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas <sup>3</sup>	2.106	2.111	2.116
G	107(c)(5)	Gas Produced from Tight Formations <sup>4</sup>	7.364	7.382	7.400
H	108	Stripper Gas	6.485	6.522	6.559
I	109	Not Otherwise Covered	3.046	3.054	3.062

<sup>1</sup> Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

<sup>2</sup> Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

<sup>3</sup> Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

<sup>4</sup> The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519-A. (See § 271.703 of the Commission's regulations.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Feb. 1991	Mar. 1991	Apr. 1991
Post-1974 gas: <sup>2</sup> All producers.....	\$3.046	\$3.054	\$3.062
1973-1974 Biennium gas:			
Small producer.....	2.569	2.575	2.581
Larger producer.....	1.971	1.976	1.981
Interstate rollover gas: All producers.....	1.129	1.132	1.135
Replacement contract gas or recompletion gas:			
Small producer.....	1.447	1.451	1.455
Larger producer.....	1.105	1.108	1.111
Flowing gas:			
Small producer.....	.730	.732	.734
Larger producer.....	.615	.617	.619
Certain Permian Basin gas:			
Small producer.....	.862	.864	.866
Large producer.....	.762	.764	.766
Certain Rocky Mountain gas:			
Small producer.....	.862	.864	.866
Large producer.....	.730	.732	.734
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69.....	.696	.698	.700
Other contracts.....	.644	.646	.648
Minimum rate gas: <sup>1</sup> All producers.....	.377	.378	.379

<sup>1</sup> Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.<sup>2</sup> This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).**§ 271.102 [Amended]**

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of February, March, April, 1991 in Table III.

TABLE III—INFLATION ADJUSTMENT

Month of Delivery	Factor <sup>1</sup>
1991:	
February.....	1.00247
March.....	1.00247
April.....	1.00247

<sup>1</sup> Factor by which price in preceding month is multiplied.

[FR Doc. 91-2483 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF THE TREASURY****Customs Service****19 CFR Part 4**

[T.D. 91-11]

**Pleasure Vessels of Switzerland Entitled to Cruising Licenses**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding Switzerland to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been informed that yachts used and employed

exclusively as pleasure vessels belonging to any resident of the U.S. are allowed to arrive at and depart from Swiss ports and cruise in the waters of Switzerland without being subjected to formal entry and clearance procedures. Therefore, Customs is extending reciprocal privileges to Swiss-flag pleasure vessels.

**DATES:** These privileges became effective for Switzerland on March 22, 1990. This amendment is effective February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kristina Ver Steeg, Carrier Rulings Branch (202-566-5706).

**SUPPLEMENTARY INFORMATION:****Background**

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provides that U.S. documented vessels with a recreational endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the U.S., may proceed from port to port in the U.S. or to foreign ports without entering and clearing, as long as they have not visited hovering vessels. When returning from a foreign port or place, such pleasure vessels are required to report their arrival pursuant to § 4.2, Customs Regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the U.S. are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the U.S. However, as provided in § 4.94(b),

Customs Regulations (19 CFR 4.94(b)), pleasure vessels from certain countries may be issued cruising licenses which exempt them from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees). Upon arrival at each port of entry in the U.S., the master shall report the fact of arrival to the appropriate Customs office. Yachts or pleasure vessels not carrying passengers or merchandise in trade are exempt from paying tonnage tax and light money pursuant to § 4.21(b)(5), Customs Regulations (19 CFR 4.21(b)(5)). Cruising licenses are available to pleasure vessels of countries which extend reciprocal privileges to U.S. pleasure vessels. A list of these countries is set forth in § 4.94(b).

By diplomatic note, the Government of Switzerland informed the Department of State that Switzerland permits U.S.-flag yachts, used exclusively as pleasure vessels and belonging to any resident of the U.S., to arrive at and depart from Swiss ports and to cruise the waters of Switzerland without entering and clearing Swiss Customs and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses.

On March 22, 1990, the Department of State advised the Chief, Carrier Rulings Branch, U.S. Customs Service, of the position of Switzerland. The Chief, Carrier Rulings Branch, is of the opinion that satisfactory evidence has been furnished to establish the reciprocity

required in § 4.94(b), effective March 22, 1990. Accordingly, Switzerland should be added to the list of countries set forth in § 4.94(b).

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

#### Inapplicability of Public Notice and Delayed Effective Date Requirements, The Regulatory Flexibility Act and Executive Order 12291

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria, for a "major rule" as defined in E.O. 12291 and, accordingly, a regulatory impact analysis is not required.

#### Drafting Information

The principal author of this document was Frank Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

#### Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in Switzerland, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

#### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 is revised to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

\* \* \* \* \*

§ 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. App. 91, 104, 313, 314;

\* \* \* \* \*

#### § 4.94 [Amended]

2. Section 4.94(b), Customs Regulations (19 CFR 4.94(b)), is amended by inserting, in appropriate alphabetical order, "Switzerland" in the list of

countries whose yachts may be issued U.S. cruising licenses.

Dated: January 29, 1991.

Kathryn C. Peterson,  
Chief, Regulations and Disclosure Law Branch.

[FR Doc. 91-2510 Filed 2-1-91; 8:45 am]

BILLING CODE 4620-02-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD7-90-79]

#### Drawbridge Operation Regulations; Canaveral Barge Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of Brevard County, the Coast Guard is adding regulations governing the Christa McAuliffe (SR 3) drawbridge on Merritt Island by permitting the draw to remain closed during certain periods. This change is being made because the vehicular traffic pattern has changed. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on March 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Walt Paskowsky, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On September 14, 1990, the Coast Guard published proposed rule (55 FR 37905) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated September 28, 1990. In each notice interested persons were given until October 29, 1990, to submit comments.

#### Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and Lt. Genelle Tanos, project attorney.

#### Discussion of Comments

53 comments were received. One commenter requested that the closed periods remain the same and additional traffic signals and lane capacity be added to improve vehicular traffic flow. The Florida Department of Transportation is currently undertaking a study for widening the roadway corridor. 14 commenters including petitions and a letter from a county commissioner supported the county's proposal. Several of these also

requested that the operating rules for the nearby 401 drawbridge be studied or changed. These comments were sent to the owner of the 401 bridge for their consideration. Several commenters requested that tugs with tows be prohibited from passing through during the closed periods. The existing rule requiring the draw to open as soon as possible for tugs and tows and vessels in distress is necessary to avoid possible damage to the bridge structure or to the vessels due to the difficulty such vessels have in maintaining position within the navigable channel. One suggested a fee be collected for a vessel that requests a drawbridge opening. This would require a revision to 33 CFR part 117 and is beyond the scope of this rule. 38 commenters, including 5 with petitions, expressed support for the county's proposal but cited a local newspaper article that incorrectly reported the proposed closure periods. No additional information was presented to support a change to the county's proposal. The Coast Guard has carefully considered the comments and has determined that no new information has been presented that justifies changing the proposed regulation. The final rule is therefore, unchanged in substance (minor editorial changes have been made) from the proposed rule published on September 14, 1990.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that the rule will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

**Regulations**

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.273(a) is revised to read as follows:

**§ 117.273 Canaveral Barge Canal.**

(a) The draw of the Christa McAuliffe bridge, SR 3, mile 1.0, near Indianola shall open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday, except federal holidays, the draw need not open for the passage of vessels. From 10 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given. The draw shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress.

Dated: January 14, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-2477 Filed 2-1-91; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[AD-FRL-3901-7]

**Standards of Performance for New Stationary Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

**SUMMARY:** A notice entitled "Standards of Performance for New Stationary Sources: Amendments to subpart J (Petroleum Refineries) and Addition of Performance Specification 7 to appendix B" was published in the Federal Register on October 2, 1990 (55 FR 40171). This rule made revisions to bring the sulfur dioxide monitoring requirements into effect, add Performance Specification 7 for hydrogen sulfide continuous emission monitoring systems, and add pertinent information for data reduction. In the rule, Method 5 was incorrectly listed for determining particulate

emissions. This action corrects the notice by designating either Method 5B or 5F as the appropriate method.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Foston Curtis or Peter Westlin, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

**SUPPLEMENTARY INFORMATION:****List of Subjects in 40 CFR Part 60**

Air pollution control, Incorporation by reference, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: January 20, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

**PART 60—[AMENDED]**

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. In § 60.106, paragraph (b)(2) is revised to read as follows:

**§ 60.106 Test methods and procedures.**

\* \* \* \* \*

(b) \* \* \*  
(2) Method 5B or 5F is to be used to determine particulate matter emissions and associated moisture content from affected facilities without wet FGD systems; only Method 5B is to be used after wet FGD systems. The sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times may be approved by the Administrator when process variables or other factors preclude sampling for at least 60 minutes.

\* \* \* \* \*

[FR Doc. 91-2537 Filed 2-1-91; 8:45 am]

BILLING CODE 6580-50-M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 90-438; RM-7441]

**Radio Broadcasting Services; Dock Junction, GA**

AGENCY: Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 290C3 for Channel 290A at Dock Junction, Georgia, and modifies the construction permit for Station WXMK(FM) to specify operation on the higher class channel, at the request of Southland Radio, Inc. See 55 FR 42030, October 17, 1990. Channel 290C3 can be allotted to Dock Junction in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) east of the community, in order to avoid a short-spacing to a proposal to substitute Channel 290C3 for Channel 290A at Lakeland, Georgia. The coordinates are North Latitude 31-11-30 and West Longitude 81-28-50. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** March 18, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-438, adopted January 22, 1991, and released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 290A and adding Channel 290C3 at Dock Junction.

Federal Communications Commission.  
Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2558 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 90-443; RM-7239]

**Radio Broadcasting Services; Sikeston, MO**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document substitutes Channel 250C3 for Channel 249A at Sikeston, Missouri, in response to a petition filed by Delta Radio Corporation. See 55 FR 42741, October 23, 1990. We shall also modify the license for Station KSTG(FM), Channel 249A, Sikeston, to specify operation on Channel 250C3. The coordinates for Channel 250C3 are 36-57-30 and 89-32-05.

EFFECTIVE DATE: March 18, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-443, adopted January 22, 1991, and released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 249A and adding Channel 250C3 at at Sikeston.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2559 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 88-145; RM-6201; RM-6408; RM-6409]

**Radio Broadcasting Services; Summerville, Summerton and Bowman, SC**

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

**SUMMARY:** The Commission, on its own motion, corrects the *Report and Order* which, *inter alia*, substituted Channel 227C2 for Channel 228A at Summerville, South Carolina, and modified the license of Millennium Communications of Charleston, Inc., for Station WWWW-FM to specify operation on the higher powered channel. See 55 FR 51907, December 18, 1990. The staff, in footnote 6, inadvertently stated that an application for Channel 227C2 at Summerville would not be accepted until action is taken by the Court of Appeals in *Chester County Broadcasting Co. v. FCC*, Nos. 90-1496 *et al.* (DC Cir. Oct. 19, 1990).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Erratum, MM Docket No. 88-145, released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2560 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 89-596; RM-7144]

**Radio Broadcasting Services; Canton, SD**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of Dallas M. Tarkenton, substitutes Channel 274A for Channel 273A at Canton, South Dakota, and modifies his construction permit for Station KIXS to specify operation on the alternate Class A channel. Operation on Channel 274A could permit Station KIXS to operate with 6 kW of power. Channel 274A can be allotted to Canton in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station KIXS' construction permit. The coordinates for Channel 274A at Canton are North Latitude 43-17-05 and West Longitude 96-32-49. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 18, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-596, adopted January 22, 1991, and released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 273A and adding Channel 274A at Canton.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2561 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 90-455; RM-7356]

**Radio Broadcasting Services; Bloomer, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 236C3 for Channel 236A at Bloomer, Wisconsin, and modifies the construction permit for Station WPHQ(FM) to specify operation on Channel 236C3, in response to a petition filed by Starcom, Inc. See 55 FR 43148, October 26, 1990. The coordinates for Channel 236C3 are 45-00-30 and 91-19-59.

**EFFECTIVE DATE:** March 18, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-455, adopted January 22, 1991, and released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 236A and adding Channel 236C3 at Bloomer.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2562 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 90**

[PR Docket No. 89-45; FCC 91-22]

RIN 3060-AE59

**Expansion of Eligibility and Shared Use Criteria for Private Land Mobile Frequencies**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action expands the list of entities eligible to use paging operations in the private land mobile radio services. Specifically, paging licensees in the Business Radio Service may now serve all eligibles in the Private Radio Services as well as the Federal Government, and private carrier paging licensees in the 929-930 MHz band may also provide service to representatives of the Federal Government. This action is necessary to satisfy the growing demand for paging operations and to provide the Federal Government alternatives to meeting their diverse paging requirements. The intended effect of this action is to extend the benefits of private radio communications services to end users who have demonstrated a need for these services and to make more effective use of the spectrum.

**EFFECTIVE DATE:** March 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Allen, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, PR Docket No. 89-45, adopted on January 17, 1991 and released January 30, 1991. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (room 5202), 2025 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20037, (202) 452-1422.

**Summary of Report and Order**

1. In March of 1989, the Commission initiated this proceeding by *Notice of Proposed Rule Making*, 54 FR 14109, April 7, 1989, with the goal of expanding eligibility criteria and introducing greater flexibility into shared use of licensed facilities on private land mobile spectrum. Specifically, the Commission proposed changing the part 90 eligibility criteria to: (1) Permit non-eligible entrepreneurs to be licensed directly in

most part 90 radio services below 800 MHz to serve eligible end users within these services; (2) allow private carriers operating in the Business Radio Service to serve all part 90 eligibles; and (3) permit private carrier paging licensees on paging-only channels in the Business Radio Service below 800 MHz and on the private carrier paging channels at 900 MHz to serve individuals and the Federal Government.

2. After reviewing the record and considering the concerns raised in the comments to the *Notice*, the Commission decided to adopt only partly what it proposed. The Commission declined to adopt most of its proposals dealing with broad eligibility criteria in the private land mobile radio services. The Commission did, however, extend to private carrier paging operators in the Business Radio Service on paging-only frequencies the authority to serve all part 90 eligibles as well as the Federal Government. Private carrier paging licensees on the 929-930 MHz frequencies may also now serve the Federal Government. Individuals were continued to be excluded as eligibles for service from private carrier paging licensees.

**List of Subjects in 47 CFR Part 90**

Private carriers, Radio.

*Amendatory Text*

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations, 47 CFR part 90, is amended as follows:

**PART 90—[AMENDED]**

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.75 is amended by revising paragraph (c)(10) to read as follows:

**§ 90.75 Business radio service.**

\* \* \* \* \*

(c) \* \* \*

(10) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to persons eligible for licensing under subpart B, C, D, or E of this part and to representatives of Federal Government agencies.

\* \* \* \* \*

3. 47 CFR 90.494 is amended by revising footnote 1 in the table in paragraph (a) to read as follows:

§ 90.494 One-way operations in the 929-930 MHz Band.

(a) \* \* \*

<sup>1</sup> Above Line A this frequency is available only to eligibles in Pool 1.

Frequencies listed in Pool 1 are available for shared use by all eligible part 90 users except those eligible as private carrier paging (PCP) licensees.

Frequencies listed in Pool 2 are available only for shared use by private

carrier paging (PCP) licensees in providing one-way paging service to representatives of Federal Government agencies and to persons eligible for licensing under subpart B, C, D, or E of this part.

Frequencies 929.7625 and 929.9875 MHz are available for shared use in multi-area paging systems by private carrier paging (PCP) licensees.

Frequencies 929.2625 and 929.4875 MHz are available only for shared use in multi-area paging systems for all part 90 users except private carrier paging (PCP) licensees.

\* \* \* \* \*

Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

[FR Doc. 91-2563 Filed 2-1-91; 8:45 am]  
BILLING CODE 6712-01-M

# Proposed Rules

Federal Register

Vol. 56, No. 23

Monday, February 4, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 90-231]

#### Importation of Avocados from New Zealand

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Fruits and Vegetables regulations to allow the importation of avocados from New Zealand, subject to our inspection at the port of first arrival and treatment if injurious insects are found. We are taking this action as the result of a request from the Government of New Zealand and because there appears to be no significant pest risk associated with the importation of avocados from New Zealand under these circumstances.

**DATES:** Consideration will be given only to comments received on or before March 6, 1991.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-231. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Griffin, Head, Permit Unit, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* prohibit or restrict the importation into the United States of certain fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-6 provides guidelines for the inspection, disinfection, or refusal of entry for imported fruits and vegetables at the port of first arrival and at the destination point at the option of the United States Department of Agriculture (USDA).

Recently, the Minister of Agriculture and Fisheries of New Zealand requested that we consider allowing the entry of avocados from New Zealand, because New Zealand produces more avocados than its population can consume. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined, based upon a review of scientific literature, that New Zealand is free from certain injurious insects, including fruit and melon flies. Based on information obtained by APHIS officials, we have determined that any other injurious insects that might be carried from New Zealand on the avocados would be easily detectable by a United States Department of Agriculture inspector. The inspector is authorized to require disinfection or treatment in accordance with § 319.56-6 if such insects are detected and to refuse entry if the fruit or vegetable cannot be cleaned by disinfection or treatment.

Therefore, we propose to add a new § 319.56-2s to allow the importation of avocados from New Zealand, subject to inspection at the port of first arrival and disinfection or treatment if any injurious insects are found.

##### Executive Order 12291 and Regulatory Flexibility Act

This proposal has been reviewed in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule, if adopted, would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic

regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document proposes to change the fruit and vegetable regulations (title 7 CFR subpart 319.56) to list avocados from New Zealand as enterable into the United States. If this change is adopted, avocados from New Zealand would be allowed entry into the United States subject to inspection. Disinfection or treatment would also be required if found necessary by the inspector.

No increase in pest infestations are foreseen, because New Zealand is free from certain injurious insects and any other injurious insects would be easily detectable by an inspector. Therefore, no adverse economic consequences are expected in the United States as a result of this proposed regulatory change.

According to the United States Department of Commerce, avocados are produced on 6,902 fruit-and-tree-nut farms in the United States. Eighty-six percent or 5,920 of these farms are located in California. The other significant producing State is Florida. Information on the size of these U.S. fruit-and-tree-nut-producing farms is unavailable, and no data concerning avocado-only-producing farms is known. In general, 46 percent of the farms producing fruit and tree nuts in California and Florida are run by operators whose principal occupation is farming, the remaining 54 percent are run by operators whose principal occupation is other than farming. Approximately 17 percent of farms in California and Florida which produce fruit and tree nuts have sales of agricultural products in excess of \$100,000, while 10 percent have sales between \$50 to \$100,000, 27 percent have sales between \$10 to \$50,000, and 46 percent have sales below \$10,000. Farms run by operators whose principal occupation is not farming are more likely to have sales below \$10,000.

According to the Agricultural Marketing Service and the Economic Research Service of USDA, U.S. avocado production currently totals 175 to 200 thousand metric tons annually, and U.S. imports of avocados currently total 4.5 to 5.5 thousand metric tons

annually. Most of these imports arrive from Chile. Annual avocado supplies in the United States thus total approximately 180 to 206 thousand metric tons.

New Zealand produces one thousand metric tons of avocados annually. It is unlikely that U.S. imports of avocados from New Zealand would total more than 500 metric tons annually. Avocado imports from New Zealand would likely arrive in the United States during the late summer and fall months (July-December) as do imports from Chile. Imports from New Zealand, therefore, would compete with only a portion of U.S. production. Approximately 50 percent of U.S. avocado production is currently available between July and December and total U.S. supplies (U.S. production plus imports) during July-December range from 92 to 106 thousand metric tons. The additional avocados expected from New Zealand as a result of the regulatory change proposed in this docket would add only 0.5 percent to the total available supply in the U.S. during July-December. This slight increase in supply is unlikely to cause an appreciable change in U.S. avocado prices, and thus no impact on U.S. avocado producers or consumers would be expected as a result of this proposed regulatory change. However, U.S. importers of avocados would be expected to realize a small economic benefit due to the slight increase in supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

#### List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

### PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR part 319 as follows:

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In subpart—Fruits and Vegetables, a new § 319.56-2s would be added to read as follows:

**§ 319.56-2s Administrative instructions; conditions governing the entry of avocados from New Zealand.**

Avocados may be imported into the United States from New Zealand in accordance with § 319.56-6 and all other applicable requirements of this subpart.

Done in Washington, DC, this 30th day of January, 1991.

James W. Glosser,  
Administrator, Animal and Plant Health  
Inspection Service.

[FR Doc. 91-2571 Filed 2-1-91; 8:45 am]

BILLING CODE 3410-34-M

### DEPARTMENT OF JUSTICE

#### Drug Enforcement Administration

#### 21 CFR parts 1301 and 1304

#### Definition and Exemption of Affiliated Practitioners

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The DEA proposes to amend its regulations by defining the term *affiliated practitioner* in part 1304, and exempting certain affiliated practitioners from the requirements of registration in part 1301.

The new definition and exemption will permit nurse practitioners, physician's assistants and similar health care professionals to prescribe controlled substances as agents of the physicians with whom they are affiliated.

**DATES:** Written comments and objections must be received on or before April 5, 1991.

**ADDRESSES:** Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Deputy Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement

Administration, Washington, DC 20537. Telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:** Sec. 1301.24 of title 21 of the Code of Federal Regulations concerns the exemption of agents and employees of a registered practitioner from the requirement of registration in order to dispense or administer controlled substances. However, § 1301.24 does not address the affiliated practitioner such as the nurse practitioner, advanced practice registered nurse, certified nurse midwife, nurse anesthetist, obstetrical nurse, critical care nurse, physician assistant, or prescribing pharmacist who administers, dispenses and prescribes controlled substances under a supervising or sponsoring practitioner.

Nurse anesthetists are included in these regulations so that they may prescribe controlled substances as affiliated practitioners under appropriate circumstances. However, DEA recognizes that nurse anesthetists rarely prescribe controlled substances. The direct administration, or the ordering of controlled substances pre-operatively, intra-operatively or post-operatively, by a nurse anesthetist does involve prescribing within the meaning of 21 CFR 1306.02(f). These regulations do not require any change in the current practice and procedures of nurse anesthetists or the institutional and individual practitioners with whom they may practice.

It is the DEA's position that only those practitioners who, by virtue of the statutory authority vested in their professions, have plenary authority to administer, dispense, and prescribe controlled substances without supervision, control, or oversight of another professional, shall be given an individual DEA registration. Independent controlled substance prescriptive authorization granted by state legislation is a prerequisite to the issuance of a DEA registration number for a practitioner. The affiliated practitioner who administers, dispenses, and prescribes controlled substances under derived authority set forth in a protocol, collaborative practice agreement, or utilization plan with a registered practitioner, is or acts as an agent or employee of that registered practitioner. The affiliated practitioner, when acting in the usual course of business of employment may administer, dispense and prescribe controlled substances using the registration of the supervising or sponsoring practitioner and is exempted from being individually registered.

DEA also proposes to amend § 1304.02 of title 21 of the Code of Federal Regulations to define the term *affiliated practitioner*. The definition establishes that the affiliated practitioner is or acts as an agent or employee of a registered practitioner and may administer, dispense, and prescribe a controlled substance by virtue of a protocol, collaborative practice agreement, or utilization plan entered into with the supervising or sponsoring practitioner.

In view of the above, DEA proposes to amend § 1304.02 by adding the definition of *affiliated practitioner*.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review of the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

#### List of Subjects

##### 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

##### 21 CFR Part 1304

Drug Enforcement Administration, Drug traffic control, Reporting requirements.

For reasons set out above, it is proposed that 21 CFR parts 1301 and 1304 be amended as follows:

#### PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Sec. 1301.24 is amended by adding a new paragraph (d) which reads as follows:

##### § 1301.24. Exemption of agents and employees: affiliated practitioners.

(d) An affiliated practitioner, as defined in § 1304.02 of this chapter, when acting in the usual course of business or employment, may

administer, dispense and prescribe controlled substances using the registration of the supervising and/or sponsoring practitioner in lieu of being individually registered provided that:

(1) Such affiliated practitioner is authorized to do so under the laws of the jurisdiction in which the affiliated practitioner practices;

(2) The supervising and/or sponsoring practitioner authorizes the affiliated practitioner to administer, dispense, and prescribe controlled substances using the supervising and/or sponsoring practitioner's registration and designates a specific internal code number for each affiliated practitioner so authorized. The code number shall consist of numbers, letters or a combination thereof and shall be a suffix to the practitioner's DEA registration number preceded by a hyphen (e.g. APO123456-10 or APO123456-A2); and

(3) A current list of internal codes and the corresponding affiliated practitioners is kept by the supervising and/or sponsoring practitioner and is made available upon request to other registrants, regulatory and law enforcement agencies for the purpose of verifying the authority of the affiliated practitioner to prescribe.

#### PART 1304—[AMENDED]

1. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(d), 965, unless otherwise noted.

2. Section 1304.02 is amended by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) which reads as follows:

##### § 1304.02. Definitions.

\* \* \* \* \*

(i) The term *affiliated practitioner* means a nurse practitioner, advanced practice registered nurse, certified nurse midwife, nurse anesthetist, obstetrical nurse, critical care nurse, physician assistant, prescribing pharmacist, or other such health care professional who is or acts as an employee or agent of a registered practitioner and has been granted authorization by a state or jurisdiction in which the affiliated practitioner practices to administer, dispense, and prescribe a controlled substance in the usual course of professional practice pursuant to a protocol, collaborative practice agreement, or utilization plan with a registered practitioner.

\* \* \* \* \*

Dated: December 28, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-2262 Filed 2-1-91; 8:45 am]

BILLING CODE 4410-08-M

#### 21 CFR Part 1301

#### Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The DEA proposes to amend its regulations to modify the existing language found in 21 CFR 1301.76(a) regarding the employment by any registrant of any person who has had an application for registration denied, or has had a registration revoked, at any time. The proposed amendment would extend the section's prohibition to any person who has been convicted of a felony relating to controlled substances or who has surrendered a registration as a consequence of controlled substance investigation.

**DATES:** Written comments and objections must be received on or before April 5, 1991.

**ADDRESSES:** Comments and objections should be submitted in triplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:** 21 CFR 1301.76(a) was originally promulgated to prohibit registrants from employing persons who had previously had a registration revoked, or had an application for registration denied, in any position giving that person access to controlled substances. The provision worked well for many years since most individuals for whom controlled substance access was a concern fell into the categories of revoked or denied registrants. In recent years, the DEA has encountered many instances in which individuals who had been convicted of felonies relating to controlled substances, or who had surrendered their registrations in lieu of civil, criminal or administrative actions resulting from their improper handling of

controlled substances, were employed by registrants in positions which gave or required unlimited access to controlled substances. This proposed rule will add the additional categories of individuals to those whose employment was previously prohibited. It should be noted that the DEA has frequently waived the prohibitions of § 1301.76(a) on the request of a registrant who has been fully advised of the employee's past history involving controlled substances and who has agreed to closely monitor and supervise the employee's activities and access to controlled substances. Such waivers will continue to be granted in appropriate circumstances.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 21 CFR 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

For reasons set out above, it is proposed that 21 CFR part 1301 be amended as follows:

#### PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.76 is proposed to be amended by revising paragraph (a) to read as follows:

#### § 1301.76 Other security controls for practitioners.

(a) The registrant shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who,

at any time, had an application for registration denied, had a registration revoked or has surrendered a registration for cause. For purposes of this subsection, the term "for cause" means a surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

Dated: December 24, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-2528 Filed 2-1-91; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[CO-077-90]

RIN 1545-AP14

#### Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 382 of the Internal Revenue Code of 1986 (relating to limitations on net operating loss carryforwards and certain built-losses following an ownership change). Rules are proposed under §§ 1.382-4 and 1.382-5 pursuant to the statutory direction under section 382(m) to prescribe regulations concerning short taxable years and controlled groups. Additional rules are proposed as amendments to § 1.382-2T relating principally to corporations that cease to exist following a merger or similar transaction.

**DATES:** Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for April 8, 1991, at 10 a.m. must be received by March 29, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

**ADDRESSES:** Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, attention CC:CORP:T:R [CO:077-90], room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** David P. Madden (202) 566-3205 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in § 1.382-5(h). This information is required by the Internal Revenue Service to assure compliance with section 382(m)(5) so that the value of a loss corporation that is a member of a controlled group is not taken into account more than once in computing the section 382 limitations for losses of the corporations in the controlled group. The respondents will be members of controlled groups as defined in section 1563(a) (and as modified under section 382(m)(5)) who elect to restore value or have value restored to them under proposed § 1.382-5(c)(2).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

*Estimated total annual reporting burden:* 875 hours. Estimated burden per respondent varies from 10 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

*Estimated number of respondents:* 21,000.

*Estimated frequency of responses:* Once every 6 years.

#### Background

This document contains proposed amendments to part 1 of title 26 of the Code of Federal Regulations under section 382. Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2065 (1986)), section 10225 of the Revenue Act of 1987 (Pub. L. No. 100-203, 101 Stat. 413

(1987)), section 1006(d) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342 (1988)), and section 7205 of the Revenue Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2106 (1989)).

#### Explanation of Provisions

##### A. Overview

Under section 382, if an ownership change occurs with respect to a loss corporation (as defined in section 382 and the regulations thereunder), the amount of the loss corporation's taxable income for a post-change taxable year that may be offset by the net operating losses of the loss corporation arising before the ownership change (and certain built-in losses or deductions recognized by the loss corporation after an ownership change) is subject to a limitation known as the section 382 limitation. The section 382 limitation for a taxable year of a loss corporation after an ownership change generally equals the fair market value of the stock of the corporation immediately before the ownership change multiplied by the long-term tax-exempt rate (a rate of return published periodically in the Internal Revenue Bulletin). See generally sections 382 (b), (e), and (f).

Section 383 and § 1.383-1T provide that if an ownership change occurs with respect to a loss corporation, the section 382 limitation for any post-change year also applies to limit the amount of capital gain or regular tax liability that may be offset by capital losses and excess credits of a loss corporation that are attributable to periods ending on or before the ownership change.

In general, an ownership change occurs if the percentage of stock of a loss corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of such stock that was owned by such persons at any time during the testing period. The percentage ownership interest of a shareholder generally is the ratio of the fair market value of the loss corporation stock owned by the shareholder to the total fair market value of the loss corporation's outstanding stock.

Generally, the inquiry whether there is an ownership change with respect to net operating loss carryovers and certain built-in losses or deductions of a loss corporation continues even though the loss corporation ceases to exist under state law if its tax attributes are succeeded to and taken into account by another corporation in a transaction described in section 381(a). For this purpose, the distributor or transferor loss corporation is treated as continuing

in existence (with the stock of the acquiring corporation being treated as its stock) and its losses are separately accounted for until the net operating loss carryovers of the distributor or transferor are fully absorbed or expire under section 172 and any net unrealized built-in losses (determined as if the date of the transfer were a change date) may no longer be treated as pre-change losses. See § 1.382-2T(f)(1) (ii) and (iii). Similar rules apply for excess credits and capital loss carryovers.

Sections 382 (m)(2) and (m)(5) provide regulatory authority for rules regarding the application of sections 382 and 383 with respect to (i) short taxable years and (ii) appropriate adjustments so that value, built-in gain and loss, and other items are not omitted or taken into account more than once in the case of any group of controlled corporations described in section 1563(a). For this purpose, section 1563(a) is applied by substituting "50 percent" for "80 percent" each place that it appears and by disregarding section 1563(a)(4).

##### B. Proposed regulations

1. Section 1.382-2T (relating to the determination of an ownership change under section 382).

Under proposed § 1.382-2T(f)(1)(iv), after a transaction described in section 381(a), a distributor or transferor corporation will not be considered as continuing in existence (A) following an ownership change of the distributor or transferor corporation in connection with, or after, the section 381(a) transaction, or (B) if there is a period of 5 consecutive years following the section 381(a) transaction during which there is not an ownership change of the distributor or transferor corporation. Accordingly, following the change date or the 5 consecutive year period, the separate accounting under § 1.382-2T(f)(1)(iii) is no longer required for purposes of determining if there is an ownership change with respect to the loss carryovers and other attributes of the distributor or transferor corporation; such an ownership change is considered to occur only if there is an ownership change of the acquiring corporation.

Proposed § 1.382-2T(f)(1)(v) and the proposed amendments to § 1.382-2T(f)(4) apply the rules relating to successors to loss corporations to a corporation that receives certain built-in loss assets from another corporation and has an adjusted basis in the assets determined, directly or indirectly, in whole or in part, by reference to the other corporation's basis. A corresponding change is also proposed to the definition of predecessor corporation in § 1.382-2T(f)(5).

The regulations also propose to amend the definition of stock in § 1.382-2T(f)(18)(i) to provide that, for purposes of determining the percentage of stock of a corporation owned by a person, each share of all the outstanding shares of stock that have the same material terms is treated as having the same value. Thus, for example, a control premium or blockage discount is not taken into account in determining the percentage of stock owned by any person.

Each of these rules is proposed to apply on any testing date on or after January 29, 1991. No inference is intended as to the application of section 382 before that date with respect to separate accounting for attributes or the value of stock with the same terms.

2. Section 1.382-4 (relating to the rules for short taxable years under section 382(m)(2)).

The regulations propose to add new § 1.382-4 relating to the determination of the section 382 limitation. The regulations will provide that the section 382 limitation for any post-change year that is less than 365 days is an amount that bears the same ratio to the section 382 limitation determined under section 382(b)(1) as the number of days in the post-change year bears to 365. The section 382 limitation, as so determined, is adjusted as required by section 382 and the regulations thereunder. This rule is proposed to be generally applicable for any post-change year of a loss corporation ending after December 31, 1986.

3. Section 1.382-5 (relating to the rules for controlled groups of corporations under section 382(m)(5)).

This document proposes regulations under section 382(m)(5) that require appropriate adjustments to the value of a loss corporation that is a member of a controlled group of corporations so that value is not taken into account more than once in computing the section 382 limitations for the loss corporations in the controlled group. In general, adjustments are required only when corporations are members of the same controlled group both when a pre-change loss arises and on the date of the ownership change. Thus, adjustments are required if a loss corporation is a component member of the same controlled group as another member (i) on December 31 of the taxable year in which a pre-change loss arises (or the change date, if earlier) and (ii) on the date that the loss corporation has an ownership change.

If a loss corporation has pre-change losses that arise in different taxable years, the component members of the controlled group with respect to the

losses arising in each taxable year may differ. Therefore, the proposed regulations are applied by determining a controlled group with respect to each year's pre-change loss of the corporation (a controlled group loss).

To avoid duplication of value in connection with a controlled group loss, an adjustment is made to reduce the value of the stock of each corporation that is a component member of the controlled group with respect to a controlled group loss by the value of the stock of other component members that it directly owns immediately after the ownership change. A second adjustment permits restoration of some or all of the previously reduced value through an increase in the value of each corporation by the amount of value that is restored to it by any other component member in which it has a direct ownership interest. A component member may elect to restore to another corporation (i) the amount of the component member's value remaining after the first adjustment plus (ii) the amount of any value that is restored to the component member by another member under the second adjustment. However, a component member may not restore value greater than the value of its stock, determined immediately before the ownership change, that is owned by the member to which value is restored.

Appropriate adjustments are also required to prevent duplications of value that may result from, for example, indirect ownership interests and cross ownership interests.

Proposed §§ 1.1502-91 through 1.1502-99 published in this issue of the *Federal Register* contain rules for the application of section 382 to an affiliated group of corporations filing a consolidated return. Proposed § 1.382-5(f) coordinates the controlled group rules described above with the proposed rules providing for the application of section 382 to consolidated groups. In applying proposed § 1.382-5, some of all of the component members of a controlled group may also be members of a consolidated group. In that event, proposed § 1.1502-93 will generally govern the computation of the section 382 limitation for any loss group or loss subgroup (as those terms are defined in proposed § 1.1502-91). However, an adjustment to value under proposed § 1.382-5 may be required because one or more members of a consolidated group or a loss subgroup are also component members of a controlled group that includes a corporation that is not a member of such group or subgroup. In such cases, the group or subgroup is treated as a single corporation. Thus, for

example, if an adjustment is required, the consolidated section 382 limitation or subgroup section 382 limitation is determined by treating, solely for purposes of proposed § 1.382-5, the loss group or the loss subgroup as a single corporation owning the stock of the other component member and adjusting value as described above.

Under proposed § 1.382-5, a loss corporation may have different values (and therefore different section 382 limitations) with respect to its controlled group losses arising in different taxable years. Unless the adjustments to value among group members are consistent with respect to all controlled group losses, it will be necessary to attribute a loss corporation's pre-change losses and the accrual of its built-in losses to particular taxable years in applying the limits on carryovers and recognized built-in losses in post-change periods. Comments are requested on problems presented by the year-by-year adjustment system (including required asset valuations) and on whether a presumption as to the timing of accrual of built-in losses, such as, for example, a consistency requirement, or some other rule should be provided to address these problems.

Proposed § 1.382-5 is effective as of March 6, 1991, and applies to a loss corporation that has an ownership change with respect to a controlled group loss on or after January 29, 1991.

The members of a controlled group on January 29, 1991, that have had an ownership change with respect to a controlled group loss before that date must determine section 382 limitations for any post-change year with respect to controlled group losses by using a reasonable method to preclude the value of stock of a component member that was owned directly or indirectly by another member immediately after an ownership change from being taken into account more than once in determining section 382 limitations with respect to controlled group losses. If such a reasonable method was not used for a post-change year, the members of the controlled group described in the preceding sentence must reduce their section 382 limitations for post-change years for which the income tax return is filed after February 28, 1991, to recapture, as quickly as possible, any section 382 limitation that members took into account in excess of the amount that would be allowable under this section.

In the case of an ownership change occurring before January 29, 1991, the controlled group with respect to a controlled group loss does not include a

corporation that is not a component member of the controlled group on January 29, 1991. Thus, in the case of an ownership change occurring before January 29, 1991, the proposed regulations do not require that the value of the stock of a loss corporation that is a component member of a controlled group be reduced to take into account the value of stock of a corporation directly owned immediately after the ownership change unless the corporation is a component member of the controlled group on January 29, 1991.

A member of a controlled group that has had an ownership change before January 29, 1991, may file amended returns to modify the amount of a section 382 limitation with respect to a controlled group loss only if (i) the modifications comply with the rules for computing a section 382 limitation contained in proposed § 1.382-5, (ii) other component members of the controlled group that elect to restore value to such member and whose taxable incomes are affected by the restoration also file amended returns that comply with § 1.382-5, and (iii) corresponding adjustments are made in amended returns for all affected taxable years ending after December 31, 1986. For example, a corporation's taxable income will be affected by an election to restore value if the electing member (or any lower tier subsidiary of the member) used that value to compute a section 382 limitation with respect to its own losses that are controlled group losses. Accordingly, any such corporation (or any lower tier subsidiary of the member) must file an amended return adjusting its own section 382 limitation if it elects to restore value to the other member.

#### Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f)(1) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for April 8, 1991. See notice of public hearing published elsewhere in this issue of the *Federal Register*.

### Drafting Information

The principal author of these proposed regulations is David P. Madden, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

### List of Subjects in 26 CFR 1.301-1 through 1.383-3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

### Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

#### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citation.

Authority: 26 U.S.C. 7805; \* \* \* §§ 1.382-4 and 1.382-5 also issued under 26 U.S.C. 382(m).

**Par. 2.** The authority citation for part 1 is amended by revising the citation for § 1.382-2T to read as follows:

Authority: 26 U.S.C. 7905 \* \* \* § 1.382-2T also issued under 26 U.S.C. 382(g)(4)(C), 26 U.S.C. 382(i), 26 U.S.C. 382(k)(1), 26 U.S.C. 382(k)(6), 26 U.S.C. 382(1)(3), 26 U.S.C. 382(m), and 26 U.S.C. 383.

**Par. 3.** Section 1.382-1T is amended as follows:

1. The current text is designated as paragraph (a).
2. A centerheading preceding the table of contents references is added and new table of contents references are added in the appropriate places in newly designated paragraph (a) as set forth below.
3. Paragraph (b) is added and reserved and paragraphs (c) and (d) are added as set forth below.

#### § 1.382-1T Limitation on net operating loss carryforwards and certain built-in losses following ownership changes (temporary).

(a) \* \* \* § 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

- \* \* \* \* \*
- (f) \* \* \*
- (1) \* \* \*
- (iv) End of separate accounting for losses and credits of distributor or transferor loss corporation.
- (v) Application to other successor corporations.
- \* \* \* \* \*
- (m) \* \* \*
- (10) [Reserved]
- (11) End of separate accounting for losses.
- (12) Stock value.
- (13) Other successor corporations.
- (14) Successor corporation and predecessor corporation.
- \* \* \* \* \*

(b) [Reserved]

(c) Section 382 limitation. This paragraph (c) lists the paragraphs contained in § 1.382-4, relating to the section 382 limitation.

#### § 1.382-4 Section 382 limitation.

- (a) Scope.
- (b) Computation of value.
- (c) Short taxable year.
- (d) Controlled groups.
- (e) Effective date.
- (d) *Controlled groups.* This paragraph (d) lists the paragraphs and subparagraphs contained in § 1.382-5, relating to controlled groups.

#### § 1.382-5 Controlled groups.

- (a) Introduction.
- (b) Controlled group loss and controlled group with respect to a controlled group loss.
- (c) Computation of value.
  - (1) Reduction in value.
  - (2) Restoration of value.
  - (3) Reduction in value by the amount restored.
  - (4) Appropriate adjustments.
  - (5) Certain reductions in the value of members of a controlled group.
  - (d) No double reduction.
  - (e) Definitions and nomenclature.
    - (1) Definitions in § 1.382-2T.
    - (2) Controlled group.
    - (3) Component member.
    - (4) Predecessors and successors.
    - (f) Coordination between consolidated groups and controlled groups.
    - (g) Examples.
    - (h) Time and manner of filing election to restore.
      - (1) Statement required.
      - (2) Revocation of election.
      - (3) Filing by component member.
      - (i) [Reserved]
      - (j) Effective date.
        - (1) In general.
        - (2) Transition rule.
        - (3) Corporations that are not members on January 29, 1991.

#### (4) Amended returns.

**Par. 4.** Section 1.382-2T is amended as follows:

(1) *Example (1)* of paragraph (e)(2)(iv) is amended by removing the last sentence.

(2) *Example (2)(ii)* of paragraph (e)(2)(iv) is amended by adding at the end thereof "See paragraph (f)(1)(iv) of this section ending the separate accounting for L<sub>1</sub>'s pre-change losses on any testing date occurring on or after January 29, 1991."

(3) *Example (2)(iii)* of paragraph (3)(2)(iv) is amended by removing the words ", but must be separately accounted for under paragraph (f)(1)(iii) of this section" from the last sentence.

(4) Paragraph (f)(1)(iii) is amended by removing the language "Pre-change losses" in the first sentence and by adding in its place "Except as provided in paragraph (f)(1)(iv) of this section, pre-change losses".

(5) New paragraphs (f)(1)(iv) and (f)(1)(v) are added to read as set forth below.

(6) Paragraph (f)(4) is amended by removing the word "loss" and by adding a new sentence at the end thereof to read as set forth below.

(7) Paragraph (f)(5) is amended by adding a new sentence at the end thereof to read as set forth below.

(8) Paragraph (f)(18)(i) is amended by adding two new sentences at the end thereof to read as set forth below.

(9) Paragraph (h)(2)(i)(A) is amended by adding the language "and solely for the purposes of determining whether a loss corporation has an ownership change" immediately after "except as otherwise provided in this section".

(10) Paragraph (m)(9) is amended by removing the language "The rules of this paragraph (m) may be illustrated by the following examples" and by adding in its place the language "The rules of paragraph (m)(1) through (m)(8) of this section may be illustrated by the following examples".

(11) New paragraph (m)(10) is added and reserved and paragraphs (m)(11), (m)(12), (m)(13) and (m)(14) are added to read as set forth below.

#### § 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

- \* \* \* \* \*
- (f) \* \* \*
- (1) \* \* \*
- (iv) *End of separate accounting for losses and credits of distributor or transferor loss corporation.* A distributor or transferor corporation ceases to be treated as continuing in

existence under paragraph (f)(1)(ii) of this section—

(A) following an ownership change of the distributor or transferor corporation in connection with, or after, the transaction described in paragraph (f)(1)(ii) of this section, or

(B) if, following the transaction described in paragraph (f)(1)(ii) of this section, there is a period of 5 consecutive years, during which there is no ownership change of the distributor or transferor corporation.

If either of the provisions of the preceding sentence is satisfied, the separate accounting described in paragraph (f)(1)(iii) of this section is no longer required or permitted for purposes of determining whether there is an ownership change with respect to the net operating loss carryovers and other attributes described in paragraph (f)(1)(ii) of this section. For purposes of determining the beginning of the testing period of the acquiring corporation, however, such net operating losses and other attributes are considered to arise, in a case described in paragraph (f)(1)(iv)(A) of this section, in a taxable year that begins not earlier than the later of the day following either the change date or the transaction described in paragraph (f)(1)(ii) of this section, or, in a case described in paragraph (f)(1)(iv)(B) of this section, the day that is 3 years before the end of the 5 consecutive year period. Pre-change losses of a distributor or transferor corporation that are subject to a limitation under section 382 continue to be subject to the limitation notwithstanding the occurrence of the section 381 transaction or the satisfaction of either of the provisions of the first sentence of this paragraph (f)(1)(iv). Any ownership change that occurs in connection with, or subsequent to, the section 381 transaction may result in an additional, lesser limitation with respect to such pre-change losses.

(v) *Application to other successor corporations.* This paragraph (f)(1) also applies, as the context may require, to successor corporations other than successors in section 381(a) transactions. For example, if a corporation receives assets from the loss corporation that have basis in excess of value, the recipient corporation's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the loss corporation's basis, and the amount by which basis exceeds value is material, the recipient corporation is a successor corporation subject to this paragraph (f)(1).

(4) *Successor corporation.* \* \* \* A successor corporation also includes, as the context may require, a corporation which receives an asset or assets from another corporation if the corporation's basis for the asset(s) is determined, directly or indirectly, in whole or in part, by reference to the other corporation's basis and the amount by which basis exceeds value is, in the aggregate, material.

(5) *Predecessor corporation.* \* \* \* A predecessor corporation also includes, as the context may require, a corporation which transfers an asset or assets to another corporation if the transferee's basis for the asset(s) is determined, directly or indirectly, in whole or in part, by reference to the corporation's basis and the amount by which basis exceeds value is, in the aggregate, material.

(18) *Stock*—(i) *In general.* \* \* \* Solely for purposes of determining the percentage of stock owned by a person, each share of all the outstanding shares of stock that have the same material terms is treated as having the same value. Thus, for example, a control premium or blockage discount is not taken into account in determining the percentage of stock owned by any person.

(m) \* \* \*

(10) [Reserved]

(11) *End of separate accounting for losses.* Paragraph (f)(1)(iv) of this section (relating to the end of separate accounting for losses of a distributor or transferor loss corporation) applies to any testing date occurring on or after January 29, 1991.

(12) *Stock value.* The last two sentences of paragraph (f)(18)(i) of this section (relating to the relative value of each share of stock having the same material terms) apply to any testing date occurring on or after January 29, 1991.

(13) *Other successor corporations.* Paragraph (f)(1)(v) of this section (relating to transferee corporations) applies to any testing date occurring on or after January 29, 1991.

(14) *Successor corporation and predecessor corporation.* The last sentences of paragraphs (f)(4) and (f)(5) of this section (relating to the definitions of successor corporation and predecessor corporation) apply to any testing date occurring on or after January 29, 1991.

Par. 5. A new § 1.382-4 is added to read as set forth below:

#### § 1.382-4 Section 382 limitation.

(a) *Scope.* Following an ownership change, the section 382 limitation for any post-change year is an amount equal to the value of the loss corporation multiplied by the long-term tax-exempt rate that applies with respect to the ownership change, and adjusted as required by section 382 and the regulations thereunder. See, for example, section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(m)(2) (relating to short taxable years), and 382(h) (relating to recognized built-in gains and section 338 gains).

(b) *Computation of value.* [Reserved]

(c) *Short taxable year.* The section 382 limitation for any post-change year that is less than 365 days is the amount that bears the same ratio to the section 382 limitation determined under section 382(b)(1) as the number of days in the post-change years bears to 365. The section 382 limitation, as so determined, is adjusted as required by section 382 and the regulations thereunder. This paragraph (c) does not apply to a 52-53 week taxable year that is less than 365 days unless a return is required under section 443 (relating to short periods) for such year.

(d) *Controlled groups.* See § 1.382-5 for rules for determining the value of a loss corporation that is a member of a controlled group.

(e) *Effective date.* This section applies to a loss corporation that has an ownership change to which section 382(a), as amended by the Tax Reform Act of 1986, applies.

Par. 6. A new § 1.382-5 is added to read as set forth below:

#### § 1.382-5 Controlled groups.

(a) *Introduction.* This section provides rules to adjust the value of a loss corporation that is a member of a controlled group of corporations on a change date so that value is not taken into account more than once in computing the limitations under section 382 for the loss corporations that are members of the controlled group. In general, the adjustment is made under paragraph (c) of this section by reducing the value of the loss corporation by the value of the stock of each component member of the controlled group that the loss corporation owns immediately after the ownership change. The loss corporation's value may, however, be increased under paragraph (c) of this section by any amount of value that the

other member elects to restore to the loss corporation.

(b) *Controlled group loss and controlled group with respect to a controlled group loss.* A controlled group loss is a pre-change loss (or a net unrealized built-in loss) of a loss corporation that is attributable to a taxable year of the corporation with respect to which the corporation is a component member of a controlled group (as defined by paragraphs (e)(2) and (e)(3) of this section). The controlled group with respect to each controlled group loss is composed of the loss corporation and each other corporation that is a component member of a controlled group that includes the loss corporation both:

(1) With respect to the taxable year to which the controlled group loss is attributable; and

(2) On the date the loss corporation has an ownership change.

See example 1 of paragraph (g) of this section for an illustration of the determination of the component members of a controlled group with respect to a controlled group loss. See paragraph (f) of this section for rules relating to the coordination of these rules and the rules regarding the computation of a limitation under section 382 for a consolidated group or a loss subgroup.

(c) *Computation of value.* For purposes of computing the limitation under section 382 with respect to each controlled group loss, the value of the stock of each component member of the controlled group with respect to that loss is determined immediately before the ownership change, and is adjusted by applying the following rules:

(1) *Reduction in value.* The value of the stock of each component member is reduced by the value (immediately before the ownership change and without regard to any restoration of value or other adjustment under this section) of the stock of any other component member directly owned by the component member immediately after the ownership change.

(2) *Restoration of value.* After the value of the stock of each component member is reduced pursuant to paragraph (c)(1) of this section, the value of the stock of each component member is increased by the amount of value, if any, restored to the component member by another component member (the electing member) pursuant to this paragraph (c)(2). The electing member may elect to restore value to another component member in an amount that does not exceed the lesser of:

(i) The sum of—

(A) The value, determined immediately before the ownership change, of the electing member's stock (after adjustment under paragraph (c)(1) of this section and before any restoration of value under this paragraph (c)(2)) that is directly owned by the other component member immediately after the ownership change, plus

(B) Any amount of value restored to the electing member by another component member under this paragraph (c)(2); or

(ii) The value, determined immediately before the ownership change, of the electing member's stock (without regard to any adjustment under this section) that is directly owned by the other component member immediately after the ownership change.

(3) *Reduction in value by the amount restored.* The value of the stock of the electing member is reduced by any amount of value that the electing member elects to restore under paragraph (c)(2) of this section to another component member.

(4) *Appropriate adjustments.* Appropriate additional adjustments consistent with paragraphs (c) (1), (2), and (3) of this section must be made to prevent any duplication of value. Thus, for example, adjustments must be made to take into account:

(i) Any indirect ownership interest in another component member;

(ii) Any cross ownership of stock by component members of the controlled group with respect to the controlled group loss; and

(iii) Any value used to determine a limitation under section 382 with respect to controlled group losses from the same period.

(5) *Certain reductions in the value of members of a controlled groups.* A loss corporation that has an ownership change is required to make adjustments consistent with this paragraph (c) with respect to its stock if the stock of another corporation in which it has a direct or indirect ownership interest was disposed of before the ownership change, and:

(i) Both corporations were component members of a controlled group—

(A) With respect to a taxable year to which a controlled group loss of the loss corporation is attributable, and

(B) At any time during the 2-year period before the ownership change; and

(ii) Both corporations are component members of a controlled group at any time during the 2-year period following the ownership change.

(d) *No double reduction.* To the extent consistent with the purposes of this section, section 382 and this section

shall not be applied to duplicate a reduction in the value of a loss corporation. Thus, for example, if the value of a loss corporation is reduced under section 382(l)(1) to take into account a capital contribution of stock of a component member, it is not again reduced by such amount under paragraph (c)(1) of this section. If this paragraph (d) applies to prevent a reduction in value from being duplicated, the application of the other rules of this section, such as those relating to the restoration of value, is correspondingly limited in a manner consistent with the principles of this section.

(e) *Definitions and nomenclature—(1) Definitions in § 1.382-T.* Except as otherwise provided, the definitions and nomenclature contained in § 1.382-2T apply to this section.

(2) *Controlled group.* Controlled group has the same meaning as in section 1536(a), determined by substituting "50 percent" for "80 percent" each place that it appears, and without regard to section 1563(a)(4).

(3) *Component member.* Component member has the same meaning as in section 1563(b), determined by substituting "December 31 (or the change date, if earlier)" for "December 31" each place it appears, and without regard to section 1563(b)(2), (b)(3)(C), and (b)(4).

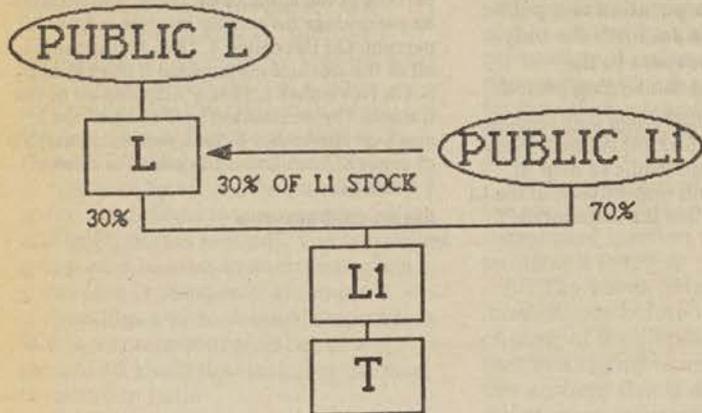
(4) *Predecessors and successors.* As the context may require, a reference to a corporation, or component member includes a reference to a predecessor or successor corporation.

(f) *Coordination between consolidated groups and controlled groups.* Some or all of the component members of a controlled group may also be members of a consolidated group, and a controlled group loss may be subject to consolidated section 382 limitation or subgroup section 382 limitation determined under § 1.1502-93. Except as otherwise provided in this paragraph (f) and §§ 1.1502-91 through 1.1502-99, § 1.1502-93 applies instead of this section when both sections, by their terms, are otherwise applicable. This section is applicable and may require an adjustment to value if a member of a consolidated group, a loss group, or a loss subgroup (as those terms are defined in § 1.1502-1(h) and § 1.1502-91) is also a component member of a controlled group with respect to a controlled group loss. Solely for purposes of applying this section, a consolidated group, loss group, or loss subgroup is treated as a single corporation. Thus to determine the limitation with respect to any portion of

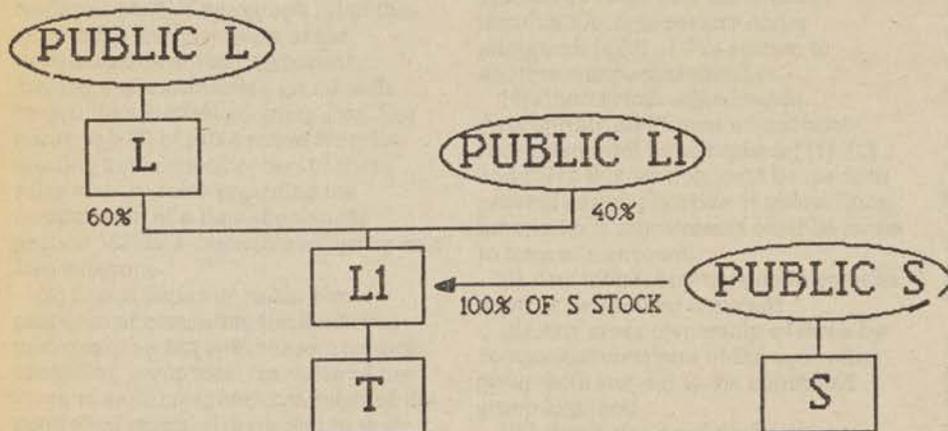


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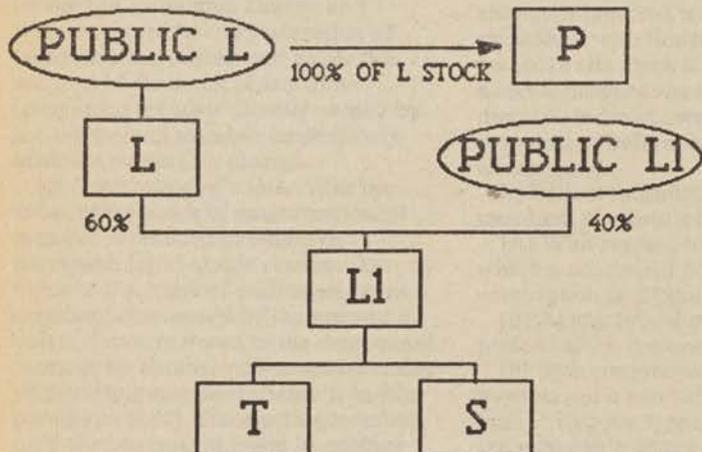
AUGUST 1, 1991



DECEMBER 1, 1991



NOVEMBER 1, 1992



(b) Under paragraph (b) of this section, the 1989 net operating loss carryover of L1 is a controlled group loss because L1 is a component member of a controlled group with respect to 1989, the year to which the loss is attributable. L1 and T compose a controlled group with respect to the net operating loss carryover because L1 and T are component members of a controlled group both (1) with respect to the taxable year to which L1's net operating loss carryover is attributable (i.e., 1989) and (2) on November 1, 1992, L1's change date. Although L and S are component members of L1's controlled group on L1's change date, they are not component members of the controlled group with respect to the 1989 net operating loss carryover because they were not component members with respect to the year to which the net operating loss carryover is attributable. The value of L1's stock must

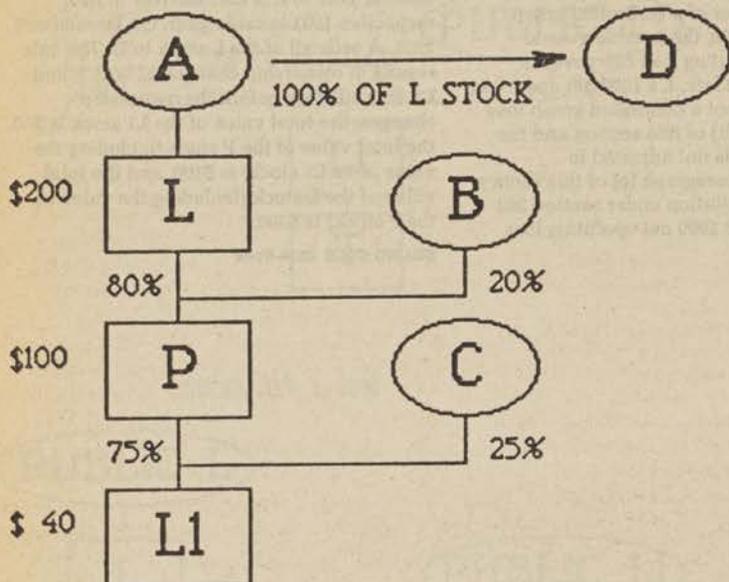
therefore be adjusted in accordance with paragraph (c) of this section to take into account an adjustment with respect to the T Stock (but not the S stock) in computing L1's limitation under section 382 with respect to its net operating loss carryover.

(c) Although L is a member of a controlled group composed of L, L1, S, and T on November 1, 1992, L's change date, it is not a component member of a controlled group with respect to 1990, the taxable year to which its net operating loss carryover is attributable. Therefore, L's 1990 net operating loss carryover is not a controlled group loss under paragraph (b) of this section and the value of L's stock is not adjusted in accordance with paragraph (c) of this section to compute L's limitation under section 382 with respect to the 1990 net operating loss carryover.

*Example 2. Adjustments to value of the controlled group members.* (a) Since 1965, A has owned all of the stock of L, L and B have owned 80 percent and 20 percent, respectively, of the stock of corporation P, and P and C have owned 75 percent and 25 percent, respectively, of the stock of L1. L and L1 each has a net operating loss for the 1990 taxable year that is carried over to its respective 1991 taxable year. On December 1, 1991, A sells all of the L stock to D. The sale results in ownership changes of both L and L1. Immediately before the ownership changes, the total value of the L1 stock is \$40, the total value of the P stock (including the value of its L1 stock) is \$100, and the total value of the L stock (including the value of the P stock) is \$200.

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(b) Under paragraph (b) of this section, the 1990 net operating loss carryovers of each of L and L1 are controlled group losses because each of L and L1 is a component member of a controlled group with respect to 1990, the year to which the losses are attributable. L, P, and L1 compose controlled groups with respect to both 1990 net operating loss carryovers because L, P, and L1 are component members of a controlled group both (1) with respect to the taxable years to which the net operating loss carryovers are attributable (i.e., 1990) and (2) on December 1, 1991, the change date.

(c) The value of the stock of L1 for purposes of determining its limitation under section 382 with respect to its net operating loss carryover from 1990 is \$40. L1 does not elect to restore any value to P under paragraph (c)(2) of this section.

(d) The value of the stock of P (\$100) is reduced under paragraph (c)(1) of this section by the value of the stock of L1 that it directly owns, \$30 ( $75\% \times \$40$ ). Following the adjustment, the value of the stock of P is \$70. P elects to restore this entire \$70 of value to L.

(e) The value of the stock of L, \$200, is reduced under paragraph (c)(1) of this section by the value of the stock of P it directly owns, i.e., \$80 ( $80\% \times \$100$ ), and increased under paragraph (c)(2) of this section by the amount P elects to restore to L, i.e., \$70. Thus, the value of the L stock for purposes of determining L's limitation under section 382 with respect to its net operating loss carryover from 1990 is \$190 ( $\$200 - \$80 + \$70$ ).

*Example 3. Limitation on restoration of value.* (a) The facts are the same as in Example 2, except that L1 elects to restore \$20 to P. For purposes of determining L1's limitation under section 382 with respect to the 1990 net operating loss carryover, the value of the stock of L1 is \$20 ( $\$40 - \$20$ ) because the value of its stock is reduced under paragraph (c)(3) of this section by the \$20 of value it elects to restore to P.

(b) The value of the stock of P (\$100) is reduced under paragraph (c)(1) of this section by the value of the L1 stock it directly owns (\$30), and is increased under paragraph (c)(2) of this section by the value that L1 elects to restore to P (\$20). Thus, the value of the P stock is \$90 ( $\$100 - \$30 + \$20$ ).

(c) P elects to restore to L the maximum value permitted under this section. The value of the stock of L, \$200, is reduced under paragraph (c)(1) of this section by the value of the P stock it directly owns (\$80), and is increased by the value that P elects to restore to L. P may elect to restore to L the lesser of (1) the sum of the value of its stock immediately after adjustment under paragraph (c)(1) of this section (i.e., \$70) plus the value restored to it by L1 (i.e., \$20) (a total of \$90) or (2) the value of the P stock (without regard to the adjustment required by paragraphs (c)(1) and (c)(2) of this section) that is directly owned by L immediately before the ownership change (i.e., \$80). Thus, \$80 is the maximum amount that P may elect to restore to L. Following the restoration of value by P, the value of the L stock for purposes of determining L's limitation under section 382 is \$200 ( $\$200 - \$80 + \$80$ ).

*Example 4. Coordination with consolidated return regulations.* (a) P and its wholly owned subsidiary L file a consolidated return. L owns 79 percent of the outstanding stock of L1. P acquired the stock of L in 1985 and L acquired the stock of L1 in 1986. The P consolidated group has a consolidated net operating loss arising in the 1990 consolidated return year that is carried over to 1992. L1 has a net operating loss arising in its 1990 taxable year that is also carried over to 1992. On January 1, 1992, the P consolidated group has an ownership change under § 1.1502-92(b)(1)(i) and L1 has an ownership change under § 1.382-2T.

(b) Under paragraph (b) of this section, the 1990 net operating loss carryover of the P group is a controlled group loss because P, L, and L1 are component members of a controlled group with respect to 1990, the year to which the loss is attributable. P, L, and L1 compose a controlled group with respect to the 1990 net operating loss carryover of the P loss group because they are component members of a controlled group both (1) with respect to the taxable years to which the net operating loss carryover is attributable (i.e., 1990) and (2) on January 1, 1992, the P group's change date. Because P and L compose a loss group (within the meaning of § 1.1502-91(c)) with respect to its 1990 net operating loss carryover, the P loss group must compute a consolidated section 382 limitation with respect to its 1990 net operating loss carryover as a result of the ownership change.

(c) In computing the consolidated section 382 limitation under § 1.1502-93 with respect to the 1990 net operating loss carryover, the value of the P stock immediately before the ownership change is reduced under paragraphs (c)(1) and (f) of this section by the value immediately before the ownership change of the L1 stock directly owned by L immediately after the ownership change. L1 may, however, elect to restore such value to the P consolidated group to the extent permitted under paragraph (c)(2) of this section.

*Example 5. Appropriate adjustments for indirect ownership interests.* (a) Individual A owns all of the stock of L, L owns an 80 percent interest in the capital and profits of partnership BS, and PS owns 75 percent of the stock of L1. Both L and L1 have net operating losses for the 1990 taxable year that are carried over to their respective 1991 taxable years. On December 19, 1991, A sells all of the L stock to an unrelated individual. The sale results in an ownership change of L and L1.

(b) Under paragraph (b) of this section, the 1990 net operating loss carryovers of each of L and L1 are controlled group losses because each of L and L1 is a component member of a controlled group with respect to 1990, the year to which the losses are attributable. L and L1 compose controlled groups with respect to each corporation's net operating loss carryovers because L and L1 are component members of a controlled group both (1) with respect to the taxable years to which the net operating loss carryovers are attributable (i.e., 1990) and (2) on December 19, 1991, the change date.

(c) L has an indirect ownership interest in L1 which, under paragraph (c)(4) of this section, must be taken into account in applying this section. As a result, the value of the L stock for purposes of determining its limitation under section 382 with respect to the 1990 net operating loss carryover must be reduced by the value of L's indirect ownership interest in the L1 stock (60 percent) that it owns through PS immediately before the ownership change, and is increased by the amount (if any) that L1 elects to restore to L under paragraph (c)(2) of this section. The value of L1 is reduced under paragraph (c)(3) of this section to the extent that L1 elects to restore value to L.

(h) *Time and manner of filing election to restore—(1) Statement required.* The election to restore value described in paragraph (c)(2) of this section must be in the form of the following statement: "THIS IS AN ELECTION UNDER § 1.382-5 OF THE INCOME TAX REGULATIONS TO RESTORE ALL OR PART OF THE VALUE OF [insert name and E.I.N. of the electing member] TO [insert name and E.I.N. of the corporation to which value is restored]. The statement must also:

(i) Identify the change date for the loss corporation in connection with which the election is made;

(ii) State the value of the electing member's stock (without regard to any adjustment under paragraph (c) of this section) immediately before the ownership change;

(iii) State the amount of any reduction required under paragraph (c)(1) of this section with respect to stock of the electing member that is owned directly or indirectly by the corporation to which value is restored;

(iv) State the amount of value that the electing member elects to restore to the corporation; and

(v) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of this section.

The statement must be signed on behalf of both the electing member and the corporation to which such value is restored by persons authorized to sign their respective income tax returns, and be filed by the loss corporation with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for such year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group.

(2) *Revocation of election.* An election made under this section is revocable

only with the consent of the Commissioner.

(3) *Filing by component member.* An electing member must attach a copy of the statement described in paragraph (h)(1) of this section to its income tax return (or amended return) for the taxable year which includes the change date in connection with which the election is made.

(i) [Reserved]

(j) *Effective date—(1) In general.* This section applies to a loss corporation that has an ownership change with respect to a controlled group loss on or after January 29, 1991.

(2) *Transition rule.* The members of a controlled group on January 29, 1991, that have had an ownership change with respect to a controlled group loss before January 29, 1991, must determine the limitations under section 382 for any post-change year with respect to controlled group losses by using a reasonable method to preclude the value of stock of a component member that was owned directly or indirectly by another member immediately after an ownership change from being taken into account more than once in determining the limitations under section 382 with respect to controlled group losses. If such a reasonable method was not used for a post-change year, subject to the exception in paragraph (j)(3) of this section, the members of the controlled group described in the preceding sentence must reduce their limitations under section 382 for post-change years for which the income tax return is filed after February 28, 1991, to recapture, as quickly as possible, any limitation that members took into account in excess of the amount that would be allowable under this section.

(3) *Corporations that are not members on January 29, 1991.* For purposes of this section, in the case of an ownership change occurring before January 29, 1991, the controlled group with respect to a controlled group loss does not include a corporation that is not a component member of the controlled group on January 29, 1991. Thus, in the case of an ownership change occurring before January 29, 1991, paragraph (c) of this section does not require that the value of the stock of a loss corporation that is a component member of a controlled group be reduced to take into account the value of stock of another corporation directly owned immediately after the ownership change unless the other corporation is a component member of the controlled group on January 29, 1991.

(4) *Amended returns.* A taxpayer that has had an ownership change before January 29, 1991 may file an amended

return for any taxable year to modify the amount of a limitation under section 382 with respect to a controlled group loss only if:

(i) The modification complies with the rules contained in this section for computing a limitation under section 382;

(ii) Any other component member of the controlled group with respect to the controlled group loss who elects to restore value and whose taxable income is affected by the election to restore value also files amended returns that comply with such rules; and

(iii) Corresponding adjustments are made in amended returns for all taxable years ending after December 31, 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-2174 Filed 1-29-91; 11:31 am]

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## 26 CFR Part 1

[CO-132-87]

RIN 1545-AL36

### Regulations Under Section 1502 of the Internal Revenue Code of 1986; Operation of Sections 382 and 383 With Respect to Consolidated Groups

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to the consolidated return regulations regarding the operation of sections 382 and 383 of the Internal Revenue Code of 1986 (relating to limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change) with respect to consolidated groups. These proposed amendments include rules for determining whether a loss group or a loss subgroup has an ownership change, for computing a consolidated section 382 limitation or subgroup section 382 limitation, and for applying sections 382 and 383 to corporations that join or leave a group. The rules are necessary to provide guidance to such groups on the use of certain of their tax attributes.

**DATES:** Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for April 8, 1991, at 10 a.m. must be received by March 29, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

**ADDRESSES:** Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box

7604, attention CC:CORP:TR (CO:132-87), room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** David P. Madden at (202) 566-3205 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in § 1.1502-95(e). This information is required by the Internal Revenue Service to assure that a section 382 limitation is properly determined in cases of corporations that cease to be members of a consolidated group. The respondents will be members of consolidated groups.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

*Estimated total annual reporting burden:* 360 hours.

*Estimated burden per respondent varies from 10 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes.*

*Estimated number of respondents:* 9,125.

*Estimated frequency of response:* Once every 6 years.

##### Background

This document contains proposed amendments to part 1 of title 26 of the Code of Federal Regulations (CFR) under section 1502 of the Code regarding the operation of sections 382 and 383 of the Code with respect to consolidated groups. Sections 382 and 383 were amended by the following: Section 621 of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2085 (1986)); section 10225 of the Revenue Act of 1987 (Pub. L. No. 100-203, 101 Stat. 413 (1987)); section 1006(d) of the Technical and

Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342 (1988)); and section 7205 of the Revenue Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2106 (1989)).

#### Explanation of Provisions

##### A. Overview

###### 1. Sections 382 and 383

Under section 382, if an ownership change occurs with respect to a loss corporation (as defined in section 382 and the regulations thereunder), the amount of the loss corporation's taxable income for a post-change year that may be offset by the net operating losses of the loss corporation arising before the ownership change is limited by an amount known as the section 382 limitation. The section 382 limitation also applies to limit the use of certain built-in losses recognized by the loss corporation after an ownership change.

The section 382 limitation for a taxable year of a loss corporation after an ownership change is generally equal to the fair market value of the corporation's stock immediately before the ownership change multiplied by the long-term tax-exempt rate (a rate of return published periodically in the Internal Revenue Bulletin). See generally sections 382 (b), (e), and (f). This limitation for a taxable year may be increased by certain items, such as an unused limitation for a prior taxable year and certain built-in gains recognized during the taxable year. See sections 382(b)(2) and (h).

In general, an ownership change involves an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the 3 year period ending on the date on which a loss corporation must make a determination whether it has had an ownership change). In determining whether an ownership change has occurred, all transactions occurring during the testing period that affect the stock ownership of any 5-percent shareholder whose percentage of stock ownership has increased as of the close of the testing date are taken into account. The determination of the percentage ownership interest of any shareholder is made on the basis of the ratio of the fair market value of the loss corporation stock owned by the shareholder to the total fair market value of the loss corporation's outstanding stock. Ordinarily, all stock of the loss corporation, except certain preferred stock described in section 1504(a)(4), is taken into account. Section 1.382-2T contains rules relating to ownership changes of corporations without regard to whether the

corporations file a separate return or join in filing a consolidated return.

Section 383 and § 1.383-1T provide that if an ownership change occurs with respect to a loss corporation, the section 382 limitation for any post-change year also applies to limit the amount of capital gain or regular tax liability that may be offset by capital losses and excess credits of a loss corporation arising before the ownership change.

###### 2. Single Entity Approach of the Consolidated Return Regulations

The consolidated return regulations frequently reflect a single entity approach to the taxation of consolidated groups. Under the single entity approach, the members of a consolidated group are treated as divisions of a single taxpayer with the common parent as the sole agent for each member of the group. One example of the single entity treatment is the computation of consolidated taxable income, which generally permits income earned by one member to be offset by losses sustained by other members.

This document proposes two sets of rules. The first set of rules, set forth in proposed §§ 1.1502-91 through 1.1502-93, provide the tax treatment for net operating losses that arise in (and net unrealized built-in losses with respect to) years that are not separate return limitation years with respect to a consolidated group. (A separate return limitation year, or SRLY, generally is a taxable year of a subsidiary in which the subsidiary was not a member of the group). In general, these rules adopt a single entity approach to determine ownership changes and the section 382 limitations with respect to such losses.

The proposed regulations also extend the single entity approach to loss subgroups within consolidated groups. A loss subgroup generally consists of two or more corporations that are continuously affiliated after ceasing to be members of one group where at least one of the corporations carries over losses from the first group to the second group. Thus, the single entity approach under the proposed regulations can apply, for example, to a consolidated group's acquisition of another consolidated group or of a chain of subsidiaries from another group.

The single entity approach to section 382 reflects the ability of corporations filing consolidated returns to use each other's losses as well as the principle that the tax laws should operate in a neutral manner with respect to changes in ownership. Under the neutrality principle, losses that arise while two or more corporations are members of one group and that are therefore available to

be used among the members should remain so available following an ownership change, subject only to the restrictions that would be imposed on a single entity in similar circumstances.

The second set of rules, set forth in proposed §§ 1.1502-94 and 1.1502-95, applies to corporations that join or leave a consolidated group with respect to certain attributes (e.g., attributes other than those arising in a consolidated return year). In general, section 382 is applied separately with respect to those attributes because the attributes cannot be used by other members.

The rules in each set are more fully discussed in the description of each section of the proposed regulations that follows:

##### B. Proposed regulations

###### 1. Section 1.1502-90—Table of Contents

Proposed § 1.1502-90 contains a table of contents for proposed §§ 1.1502-91 through 1.1502-99.

###### 2. Section 1.1502-91—Consequences of An Ownership Change

Proposed § 1.1502-91 provides a general rule that, following an ownership change of a loss group (or a loss subgroup), the amount of consolidated taxable income of a group for any post-change year which may be offset by pre-change consolidated attributes (or pre-change subgroup attributes) may not exceed the consolidated section 382 limitation (or subgroup section 382 limitation) for such year. The section also contains some definitions and assumptions.

In general, a loss group is a consolidated group that (i) is entitled to use a net operating loss carryover to the taxable year (not including a net operating loss carryover from a SRLY), (ii) has a consolidated net operating loss for the taxable year that includes the testing date, or (iii) has a net unrealized built-in loss on a testing date. The members included in the determination whether a group has a net unrealized built-in loss are all members other than new loss members with net unrealized built-in losses described in proposed § 1.1502-94(a)(1)(ii) and the members of a loss subgroup with respect to a net unrealized built-in loss described in proposed § 1.1502-91(d)(2). A pre-change consolidated attribute is generally a tax attribute described in the first sentence of this paragraph that is attributable to a period ending immediately before the loss group's ownership change.

A loss subgroup is composed of members of one group (the former

group) that become members of another consolidated group. In the case of a net operating loss carryover, the members of a group compose a loss subgroup if (i) they were affiliated with each other in another group, (ii) they bear a relationship to each other described in section 1504(a)(1) immediately after they become members of the group, and (iii) at least one of the members carries over a net operating loss arising in a year that is not a SRLY (and is not treated as a SRLY under proposed § 1.1502-21(c)) with respect to the former group. In the case of a net unrealized built-in loss, the members of a group compose a loss subgroup if they (i) have been continuously affiliated with each other for the 5 consecutive year period ending immediately before they become members of the group, (ii) bear a relationship to each other described in section 1504(a)(1) immediately after they become members, and (iii) have, in the aggregate, a net unrealized built-in loss. A member ceases to be included in a loss subgroup when it files a separate return or ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent. A pre-change subgroup attribute is a net operating loss carryover or recognized built-in loss that is attributable to a period before the loss subgroup's ownership change.

Anti-abuse rules are provided in order to prevent members from being inappropriately included in a loss subgroup. If a member is included in a loss subgroup with a principal purpose of avoiding the application of, or increasing the limitation under, section 382, ownership changes and limitations under section 382 are determined on a separate entity basis with respect to the members of the loss subgroup. However, taxpayers cannot elect separate entity treatment by including a member, because such an inclusion will not be considered to have been made with the requisite purpose.

### 3. Section 1.1502-92—Ownership Change Determination

Proposed § 1.1502-92 concerns the determination of an ownership change of a loss group or a loss subgroup. Ordinarily, a loss group has an ownership change if the common parent has an ownership change under section 382(g) and § 1.382-2T (the parent change method). See proposed § 1.1502-92(b)(1)(i). Similarly, a loss subgroup has an ownership change if the loss subgroup parent (in effect, the common parent of the loss subgroup) has an ownership change under section 382(g) and § 1.382-2T. See proposed § 1.1502-92(b)(1)(ii). In applying the ownership change rules of § 1.382-2T for this

purpose, loss attributes are treated as attributes of the common parent (or loss subgroup parent) and the common parent (or loss subgroup parent) is treated as a loss corporation. Under the parent change method, the determination whether a loss group (or loss subgroup) has an ownership change in a subsidiary of the group (or loss subgroup).

A supplemental method for determining whether a loss group (or loss subgroup) has an ownership change may apply to certain loss groups or loss subgroups. The supplemental method applies if a person who is a 5-percent shareholder of the common parent (including any person acting pursuant to a plan or arrangement with such a 5-percent shareholder) increases its percentage ownership both in the common parent and in any subsidiary of the group. In that event, the loss group (or loss subgroup) must also determine whether it has an ownership change under the rules for the parent change method by treating the common parent as though it had issued to the person who acquires (or is deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person's ownership of the subsidiary (determined on a separate entity basis). Other special rules are provided for testing dates and testing periods.

The common parent of a group must file the information statement required by § 1.382-2T(a)(2)(ii) with respect to the common part. A less inclusive information reporting requirement applies with respect to any loss subgroup with attributes from a SRLY.

### 4. Section 1.1502-93—Consolidated Section 382 Limitation

Proposed § 1.1502-93 provides rules for computing the consolidated section 382 limitation following an ownership change of a loss group. The limitation generally is computed by treating the loss group as a single entity. Thus, for any post-change year, the consolidated section 382 limitation is an amount equal to the value of the loss group multiplied by the long-term tax-exempt rate that applies with respect to the ownership change. The value of the loss group is the value, immediately before the ownership change, of the stock (including stock described in section 1504(a)(4)) of each member of the loss group, other than stock that is owned directly or indirectly by a member. This value is adjusted under any rule in section 382 (such as section 382(l)(1), relating to certain capital contributions)

requiring an adjustment to value for purposes of computing the section 382 limitation. The section 382 limitation, as so determined, is further adjusted as required by section 382 and the regulations thereunder (such as section 382(m)(2), relating to a short taxable year). Similar rules apply in determining the section 382 limitation for a loss subgroup.

Proposed § 1.502-93(d) provides that the single entity treatment of the loss group (or loss subgroup) applies in determining whether the continuity of business enterprises requirement of section 382(c) is met.

The members of a consolidated group may also be members of a larger controlled group. Proposed regulation § 1.382-5, published in this issue of the Federal Register, contains rules for computing the section 382 limitation for a loss corporation that is a member of a controlled group and that has an ownership change. In general, a consolidated group is treated as a single entity for purposes of proposed § 1.382-5 and, as a single entity, must make the adjustments to value prescribed by that section for purposes of determining the value of the loss group and the corporations that are members of the same controlled group but are not members of the loss group.

### 5. Section 1.1502-94—Corporations That Join a Consolidated Group

Proposed § 1.1502-94 applies to a corporation that becomes a member of a group and has loss carryovers or other attributes that are attributable to a SRLY (separate attributes). If the corporation is a member of a loss subgroup at the time it becomes a member of a group, however, these rules do not apply to the extent that proposed §§ 1.1502-91 through 1.1502-93 apply to the corporation's loss carryovers and other attributes. Under proposed § 1.1502-94, section 382 applies to the corporation to determine whether and to what extent section 382 limits the amount of consolidated taxable income that may be offset by the corporation's separate attributes. Thus, for example, a corporation may have an ownership change with respect to its separate attributes after it becomes a member of a group even though, under the parent change method, the group does not have an ownership change.

### 6. Section 1.1502-95—Corporations That Leave a Consolidated Group

Proposed § 1.1502-95 applies to a corporation that ceases to be a member of a group. If the corporation is a member of a loss subgroup at the time it

ceases to be a member of a group, however, these rules do not apply to the extent that proposed §§ 1.1502-91 through 1.1502-93 apply to the corporation's loss carryovers and other attributes.

Under these rules, section 382 generally applies separately to the corporation after it ceases to be a member. Net operating losses that are apportioned to a corporation under proposed § 1.1502-21(b) are treated as the corporation's net operating losses to determine the earliest date that the testing period for the corporation may begin.

If a loss group has an ownership change under proposed § 1.1502-92 while a corporation is a member, any portion of the consolidated net operating loss of the group apportioned to the corporation under § 1.1502-21(b) (or any other net operating loss carried over by the corporation) that was subject to the corporation section 382 limitation is a pre-change loss that continues to be subject to limitation under section 382. This limitation is zero unless the common parent elects to apportion all or part of the consolidated section 382 limitation to the corporation. The loss carried over by the corporation may be subject to an additional, lesser, section 382 limitation if the corporation has an ownership change when (or after) it ceases to be a member.

Under proposed § 1.1502-95(c), the common parent may elect to apportion all or part of the corporation section 382 limitation to a corporation that ceases to be a member of the loss group. The limitation for the group for any post-change year ending after the date that the corporation ceases to be a member is reduced to take into account the extent to which the limitation is apportioned to the corporation. Once made, the election is revocable only with the Commissioner's consent.

The apportioned amount is taken into account in determining the corporation's section 382 limitation for any taxable year after it ceases to be a member. Special rules are provided for apportioning any part of the consolidated section 382 limitation that is attributable to an adjustment, for example, under sections 382(b)(2) (relating to a carryover of unused limitation) or 382(h) (relating to an adjustment for recognized built-in gains). The apportioned amount attributable to the adjustment is treated as an adjustment to the former member's section 382 limitation for its first taxable year after it ceases to be a member.

Similar rules to those described above apply with respect to apportionment of

the limitation when a corporation leaves a group as part of a loss subgroup or leaves a loss subgroup.

#### 7. Section 1.1502-96—Miscellaneous Rules

Proposed § 1.1502-96(a) curtails the requirement of separately tracking loss carryovers and other attributes of a member of a group that are attributable to a SRLY. Separate tracking ceases if a member (or loss subgroup) has an ownership change with respect to SRLY loss carryovers in connection with joining the group (or on any change date following that time). If a member (or loss subgroup) does not have an ownership change, separate tracking ceases at the end of the 5 consecutive year period after the member (or loss subgroup) joins the group. Once either condition is satisfied, an ownership change generally can occur with respect to SRLY loss carryovers of the member (including the members of a loss subgroup) only if there is an ownership change of the loss group.

Proposed § 1.1502-96(b) provides that, under certain circumstances, a subsidiary may have an ownership change on a separate corporation basis with respect to its portion of a consolidated net operating loss (or a separately computed net unrealized built-in loss). Under § 1.1502-96(b)(1), an ownership change generally may occur as a result of the deemed exercise of options to acquire more than 20 percent of a subsidiary's stock. The deemed exercise rule applies, however, only if the options are held by a single person or by persons acting pursuant to a plan or arrangement. An option that is a bilateral contract to purchase the stock of the subsidiary is not subject to the deemed exercise rule provided the stock is sold pursuant to the contract within 1 year. If the stock is not sold within the 1 year period pursuant to the contract, the option will be deemed to have been exercised (and any ownership change resulting from the exercise will be treated as having occurred) at the earlier date under the deemed exercise rule.

A subsidiary may also have an ownership change on a separate corporation basis under proposed § 1.1502-96(b)(2) if 1 or more 5-percent shareholders, acting pursuant to a plan or arrangement to avoid an ownership change of the subsidiary, increase their percentage ownership interests in the subsidiary by more than 50 percentage points during the testing period of the subsidiary.

If either of these rules applies, section 382 will apply to the subsidiary separately with respect to loss

carryovers and other attributes attributable to the subsidiary.

#### 8. Section 1.1502-97

Proposed § 1.1502-97 is reserved. It is intended that this section will govern the application of section 382 to consolidated groups in title 11 or similar cases. Depending on the issue and the circumstances in which it arises, the rules may adopt a single entity approach.

#### 9. Section 1.1502-98—Section 383.

Proposed § 1.1502-98 provides that the rules in proposed §§ 1.1502-91 through 1.1502-97 also apply for purposes of section 383, with appropriate adjustments to take into account that section 383 applies to net capital losses and excess credits.

#### 10. Section 1.1502-99—Effective Dates

Proposed § 1.1502-99 provides the effective dates for proposed §§ 1.1502-91 through 1.1502-98. The rules are generally effective March 6, 1991, for testing dates on or after January 29, 1991. Transition rules are provided for the application of sections 382 and 383 during the period before the general effective date. During the transition period, a consolidated group is permitted to consistently use one of the following methods to determine whether an ownership change occurred and, if one did occur, its effect: (1) A method that does not materially differ from the rules of proposed §§ 1.1502-91 through 1.1502-98; (2) a method that applies the rules of section 382 and the regulations thereunder to each member on a separate entity basis; and (3) a method approved by the Commissioner upon application by the common parent. A consolidated group is not permitted to use different methods for different taxable years during the transition period.

A taxpayer may file an amended return for any prior taxable year to modify the use of a consolidated net operating loss, a net operating loss carryover (including a net operating loss carryover arising in a SRLY), or a recognized built-in gain or loss only if the amended return complies with proposed §§ 1.1502-91 through 1.1502-98. A taxpayer may only file an amended return for a prior year if it also files amended returns for all taxable years ending on or after the date of the ownership change for which returns have already been filed as of the date of the amended return.

### Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. These rules, if issued, will generally apply to consolidated groups, which tend to be larger entities. Thus, they will generally not have a significant economic impact on a substantial number of small entities, not will they significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f)(1) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before adopting these proposing regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. In particular, the Service invites comments on the following issues: how a consolidated section 382 limitation (or subgroup section 382 limitation) is absorbed in the case in which the use of only some of the losses available to the group is subject to limitation, and how the rules of sections 382 and 383 should apply when one or more of the members of the group are in a title 11 or similar case. A public hearing is scheduled for April 8, 1991. See notice of public hearing published elsewhere in this issue of the *Federal Register*.

### Drafting Information

The principal author of these proposed regulations is David P. Madden, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

### List of Subjects in 26 CFR 1.1502-1 through 1.1564-1

Consolidated returns, Controlled groups of corporations, Income taxes.

### Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 is amended in part by adding the following citation:

**Authority:** 26 U.S.C. 7805 \* \* \* Sections 1.1502-91 through 1.1502-99 also issued under 26 U.S.C. 382(h)(9), 382(k)(6), 382(m), and 1502.

**Par. 2.** New §§ 1.1502-90 through 1.1502-99 are added to read as set forth below:

### § 1.1502-90 Table of contents.

#### § 1.1502-91 Application of section 382 with respect to a consolidated group.

- (a) Determination and effect of an ownership change.
  - (1) In general.
  - (2) Special rule for post-change year that includes the change date.
  - (3) Cross reference.
  - (b) Definitions and nomenclature.
    - (c) Loss group.
      - (1) Defined.
      - (2) Example.
      - (d) Loss subgroup.
        - (1) Net operating loss carryovers
        - (2) Net unrealized built-in loss.
        - (3) Loss subgroup parent.
        - (4) Principal purpose of avoiding a limitation.
          - (5) Special rules.
          - (6) Examples.
          - (e) Pre-change consolidated attribute.
            - (1) Defined.
            - (2) Example.
            - (f) Pre-change subgroup attribute.
              - (1) Defined.
              - (2) Example.
              - (g) Net unrealized built-in gain and loss.
                - (1) In general.
                - (2) Members included.
                  - (i) Consolidated group.
                  - (ii) Loss subgroup.
                  - (3) Acquisition of built-in gain or loss assets.
                    - (4) Indirect ownership.
                    - (h) Recognized built-in gain or loss.
                      - (1) In general.
                      - (2) Disposition of stock or debt of a member.
                      - (3) Intercompany transactions.
                      - (4) Exchange basis property.
                        - (i) [Reserved]
                        - (j) Successor and predecessor.

#### § 1.1502-92 Ownership change of a loss group or a loss subgroup.

- (a) Scope.
- (b) Determination of an ownership change.
  - (1) Parent change method.
    - (i) Loss group.
    - (ii) Loss subgroup.
    - (2) Examples.
    - (3) Special adjustments.
      - (i) Common parent succeeded by a new common parent.
      - (ii) Newly created loss subgroup parent.
      - (iii) Examples.

(4) End of separate tracking of certain losses.

(c) Supplemental rules for determining ownership change.

- (1) In general.
- (2) Operating rules.
- (3) Supplemental ownership change rules.
  - (i) Additional testing dates for the common parent (or loss subgroup parent).
  - (ii) Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent).
  - (iii) 5-percent shareholder of the common parent (or loss subgroup parent).
  - (4) Examples.
  - (d) Testing period following ownership change under this section.
  - (e) Information statements.
    - (1) Common parent of a loss group.
    - (2) Abbreviated statement with respect to loss subgroups.

#### § 1.1502-93 Consolidated section 382 limitation (or subgroup section 382 limitation).

- (a) Determination of the consolidated section 382 limitation (or subgroup section 382 limitation).
  - (1) In general.
  - (2) Coordination with apportionment rule.
    - (b) Value of the loss group (or loss subgroup).
      - (1) Stock value immediately before ownership change.
      - (2) Adjustment to value.
      - (3) Examples.
      - (c) Recognized built-in gain of a loss group or loss subgroup.
        - (d) Continuity of business.
          - (1) In general.
          - (2) Example.
          - (e) Limitations of losses under other rules.

#### § 1.1502-94 Coordination with section 382 and § 1.382-2T when a corporation becomes a member of a consolidated group.

- (a) Scope.
  - (1) In general.
  - (2) Coordination in the case of a loss subgroup.
    - (3) End of separate tracking of certain losses.
    - (b) Application of section 382 to a new loss member.
      - (1) In general.
      - (2) Adjustment to value.
      - (3) Pre-change separate attribute defined.
      - (4) Examples.
      - (c) Built-in gains and losses.
      - (d) Information statements.

#### § 1.1502-95 Rules on ceasing to be member of a loss group (or loss subgroup).

- (a) Scope.
  - (1) In general.
  - (2) Election by common parent.
  - (3) Coordination with §§ 1.1502-91 through 1.1502-93.
    - (b) Separate application of section 382 when a member leaves as group.
      - (1) In general.
      - (2) Effect of a prior ownership change of the group.

- (3) Application in the case of a loss subgroup.
- (4) Examples.
- (c) Apportionment of the consolidated section 382 limitation.
- (1) Apportionment by common parent.
- (2) Effect of apportionment on the consolidated section 382 limitation.
- (3) Effect on corporations to which the consolidated section 382 limitation is apportioned.
- (4) Deemed apportionment when loss group terminates.
- (5) Appropriate adjustments when former member leaves during the year.
- (6) Examples.
- (d) Rules pertaining to ceasing to be a member of a loss subgroup.
- (1) In general.
- (2) Examples.
- (e) Filing the election to apportion.
- (1) Form of the election to apportion.
- (2) Filing of the election.
- (3) Revocation of election.

#### § 1.1502-96 Miscellaneous rules.

- (a) End of separate tracking of losses of a 5-year member.
- (1) Application.
- (2) Gains and losses not separately tracked.
- (3) Special rule for testing period.
- (4) Limits on application.
- (b) Ownership change of subsidiary.
- (1) Ownership change of a subsidiary because of options or plan or arrangement.
- (2) Special rule for contracts to purchase stock.
- (3) Examples.
- (4) Effect of the ownership change.
- (i) In general.
- (ii) Pre-change losses.
- (5) Coordination with §§ 1.1502-91, 1.1502-92, and 1.1502-94.
- (c) Continuing effect of an ownership change.

#### § 1.1502-97 [Reserved]

#### § 1.1502-98 Coordination with section 383.

#### § 1.1502-99 Effective dates.

- (a) Effective date.
- (1) In general.
- (2) Testing period may include a period beginning before January 29, 1991.
- (b) Transition rules.
- (i) In general.
- (ii) Recapture of excess limitation.
- (iii) Coordination with effective date.
- (2) Permitted methods.
- (c) Amended returns.
- (d) Section 383.

#### § 1.1502-91 Application of section 382 with respect to a consolidated group.

- (a) Determination and effect of an ownership change—(1) In general. Sections 1.1502-91 through 1.1502-93 set forth the rules for determining an ownership change under section 382 for members of consolidated groups and the section 382 limitations with respect to attributes described in paragraphs (e) and (f) of this section. These rules

generally provide that an ownership change and the section 382 limitation are determined with respect to these attributes for the group (or loss subgroup) on a single entity basis and not for its members separately. Following an ownership change of a loss group (or a loss subgroup) under § 1.1502-92, the amount of consolidated taxable income for any post-change year which may be offset by pre-change consolidated attributes (or pre-change subgroup attributes) shall not exceed the consolidated section 382 limitation (or subgroup section 382 limitation) for such year as determined under § 1.1502-93.

(2) *Special rule for post-change year that includes the change date.* If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the consolidated section 382 limitation (or subgroup section 382 limitation) does not apply to the portion of consolidated taxable income that is allocable to the period in the year on or before the change date. The allocation of consolidated taxable income for the post-change year that includes the change date must be made before taking into account any consolidated net operating loss deduction (as defined in § 1.1502-21(a)).

(3) *Cross reference.* See §§ 1.1502-94 and 1.1502-95 for rules that apply section 382 to a corporation that becomes or ceases to be a member of a group or loss subgroup.

(b) *Definitions and nomenclature.* For purposes of §§ 1.1502-91 through 1.1502-99, unless otherwise stated:

(1) The definitions and nomenclature contained in § 1.382-2T (including the nomenclature and assumptions relating to the examples in § 1.382-2T(b)) and §§ 1.1502-91 through 1.1502-99 apply; and

(2) In all examples, all groups file consolidated returns, all corporations file their income tax returns on a calendar year basis, the only 5-percent shareholder of a corporation is a public group, the facts set forth the only owner shifts during the testing period, and each asset of a corporation has a value equal to its adjusted basis.

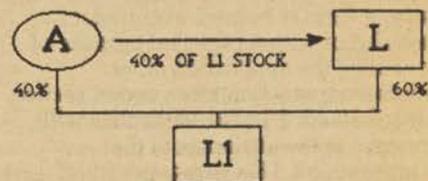
(c) *Loss group*—(1) *Defined.* A loss group is a consolidated group that:

- (i) Is entitled to use a net operating loss carryover to the taxable year that did not arise (and is not treated under § 1.1502-21(c) as arising) in a SRLY;
- (ii) Has a consolidated net operating loss for the taxable year in which a testing date of the common parent occurs (determined by treating the common parent as a loss corporation); or
- (iii) Has a net unrealized built-in loss (determined under paragraph (g) of this

section by treating the date on which the determination is made as though it were a change date).

See § 1.1502-96(a) for rules that may cause certain net operating loss carryovers (or net unrealized built-in gains and losses) to be described in the preceding sentence.

(2) *Example. Loss group.* (a) L and L1 file separate returns and each has a net operating loss carryover arising in 1991 that is carried over to 1992. A owns 40 shares and L owns 60 shares of the 100 outstanding shares of L1 stock. At the close of December 31, 1991, L buys the 40 shares of L1 stock from A. For 1992, L and L1 file a consolidated return.



(b) L and L1 become a loss group at the beginning of the consolidated return year ending on December 31, 1992, because the group is entitled to use the 1991 net operating loss carryover of L, the common parent, which did not arise (and is not treated under § 1.1502-21(c) as arising) in a SRLY. See § 1.1502-94 for rules relating to the application of section 382 with respect to L1's net operating loss carryover from 1991 which did arise in a SRLY.

(d) *Loss subgroup*—(1) *Net operating loss carryovers.* Two or more corporations that become members of a consolidated group compose a loss subgroup if they:

(i) Were affiliated with each other in another group (whether or not the group was a consolidated group) (the former group);

(ii) Bear a relationship to each other described in section 1504(a)(1) immediately after they become members of the group; and

(iii) At least one of the members carries over a net operating loss that did not arise (and is not treated under § 1.1502-21(c) as arising) in a SRLY with respect to the former group.

A separate loss subgroup is determined for each former group in which carryovers arose.

(2) *Net unrealized built-in loss.* Two or more corporations that become members of a consolidated group compose a loss subgroup if they:

(i) Have been continuously affiliated with each other for the 5 consecutive year period ending immediately before they become members of the group;

(ii) Bear a relationship to each other described in section 1504(a)(1) immediately after they become members of the group; and

(iii) Have a net unrealized built-in loss (determined under paragraph (g) of this section on the day they become members of the group by treating that day as though it were a change date).

(3) *Loss subgroup parent.* A loss subgroup parent is the corporation that bears the same relationship to the other members of the loss subgroup as a common parent bears to the members of a group.

(4) *Principal purpose of avoiding a limitation.* The corporations described in paragraph (d) (1) or (2) of this section do not compose a loss subgroup if any one of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, section 382. Instead, § 1.1502-94 applies with respect to the attributes of the corporations. This paragraph (d)(4) does not apply solely because, in connection with becoming members of the group, the members of a group (or loss subgroup) are rearranged to bear a relationship to the other members described in section 1504(a)(1).

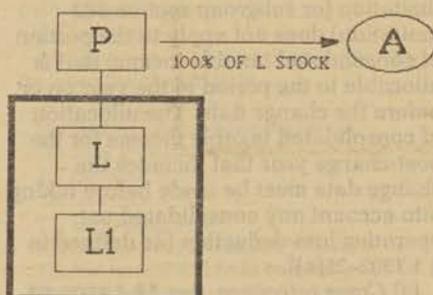
(5) *Special rules.* See § 1.1502-95(d)

for rules concerning when a corporation ceases to be a member of a loss subgroup. See also § 1.1502-96(a) for a special rule regarding the end of separate tracking of SRLY losses of a member that has an ownership change or that has been a member of a group for at least 5 consecutive years.

(6) *Examples.*

*Example 1. Loss subgroup.* (a) P owns all the L stock and L owns all the L1 stock. The P group has a consolidated net operating loss arising in 1992 that is carried to 1993. On May 2, 1993, P sells all the stock of L to A, and L and L1 thereafter file consolidated returns. A portion of the 1992 consolidated net operating loss is apportioned under § 1.1502-21(b) to each of L and L1, which they carry over to the taxable year ending December 31, 1993.

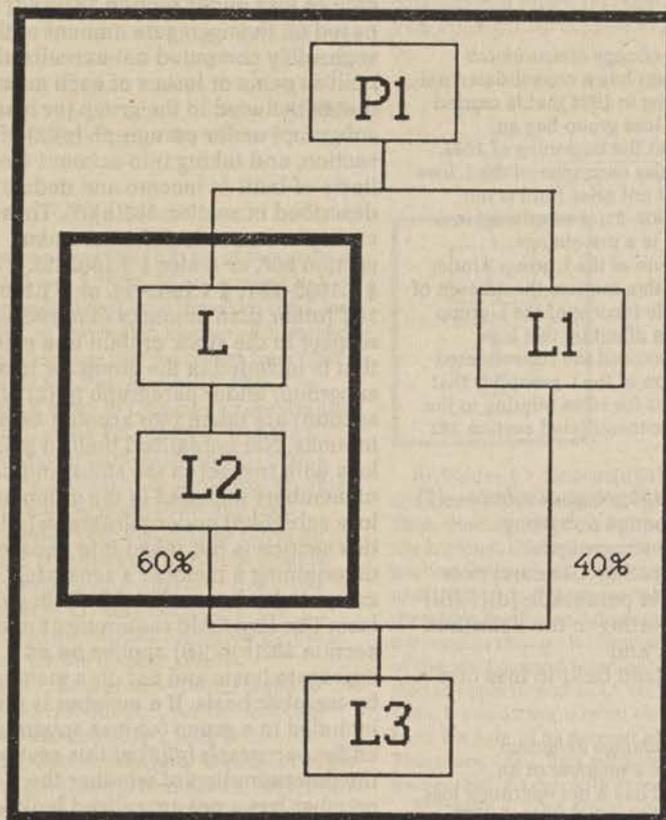
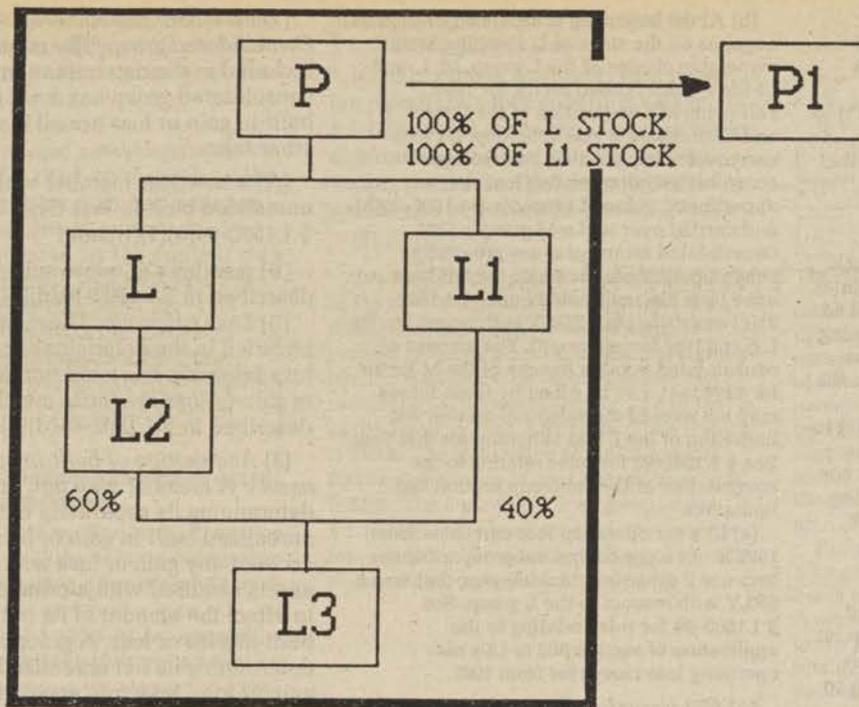
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(b) L and L1 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because they (1) were affiliated with each other in the P group (the former group), (2) bear a relationship described in section 1504(a)(1) to each other immediately after they became members of the L group, and (3) at least one of the members carries over a net operating loss arising in a year that was not a SRLY with respect to the P group. Under paragraph (d)(3) of this section, L is the loss subgroup parent of the L loss subgroup.

*Example 2. Loss subgroup—section 1504(a)(1) relationship.* (a) P owns all the stock of L and L1. L owns all the stock of L2. L1 and L2 own 40 percent and 60 percent of the stock of L3, respectively. The P group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On May 22, 1993, P sells all the stock of L and L1 to P1, the common parent of another consolidated group. The 1992 consolidated net operating loss is apportioned under § 1.1502-21(b), and each of L, L1, L2, and L3 carries over a portion of such loss to the first consolidated return year of the P1 group ending after the acquisition.

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(b) L and L2 compose a loss subgroup within the meaning of paragraph (d)(1) of this section. Neither L1 nor L3 is included in a loss subgroup because neither bears a relationship described in section 1504(a)(1) to any other member of the former group immediately after becoming members of the P1 group.

**Example 3. Loss subgroup—section 1504(a)(1) relationship.** The facts are the same as in Example 2, except that the stock of L1 is transferred to L in connection with the sale of the L stock to P1. L, L1, L2, and L3 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because they (1) were affiliated with each other in the P group (the former group), (2) bear a relationship described in section 1504(a)(1) to each other immediately after they become members of the P1 group, and (3) at least one of the members carries over a net operating loss arising in a year that was not a SRLY with respect to the P group.

(e) **Pre-change consolidated attribute—(1) Defined.** A pre-change consolidated attribute of a loss group is:

- (i) Any loss described in paragraph (c)(1)(i) or (ii) of this section (relating to the definition of loss group) that is allocable to the period ending on or before the change date; and
- (ii) Any recognized built-in loss of the loss group.

(2) **Example. Pre-change consolidated attribute.** The L group has a consolidated net operating loss arising in 1992 that is carried over to 1993. The L loss group has an ownership change at the beginning of 1993. The net operating loss carryover of the L loss group from 1992 did not arise (and is not treated under § 1.1502-21(c) as arising) in a SRLY. Therefore, it is a pre-change consolidated attribute of the L group. Under paragraph (a)(1) of this section, the amount of consolidated taxable income of the L group for 1993 that may be offset by this loss carryover may not exceed the consolidated section 382 limitation of the L group for that year. See § 1.1502-93 for rules relating to the computation of the consolidated section 382 limitation.

(f) **Pre-change subgroup attribute—(1) Defined.** A pre-change subgroup attribute of a loss subgroup is:

- (i) Any net operating loss carryover that is described in paragraph (d)(1)(iii) of this section (relating to the definition of loss subgroup); and
- (ii) Any recognized built-in loss of a loss subgroup.

(2) **Example. Pre-change subgroup attribute.** (a) L is not a member of an affiliated group, and has a net operating loss arising in 1992 that is carried over to 1993. During 1993, L acquires all the stock of L1 which has a net operating loss carryover arising in 1992. L and L1 file a consolidated return for 1993. During 1993, the L group has a consolidated net operating loss that is carried over to 1994.

(b) At the beginning of 1994, corporation M acquires all the stock of L, resulting in an ownership change of the L group. M, L, and L1 file a consolidated return for 1994. Following M's acquisition of the L stock, L and L1 compose a loss subgroup. L's loss carryover arising in 1992 and the 1993 consolidated net operating loss that is apportioned to L and L1 under § 1.1502-21(b) and carried over to the M group's 1994 consolidated return year are pre-change subgroup attributes because they did not arise (and are not treated under § 1.1502-21(c) as arising) in a SRLY with respect to the L group (the former group). The amount of consolidated taxable income of the M group for 1994 that may be offset by these losses may not exceed the subgroup section 382 limitation of the L loss subgroup for that year. See § 1.1502-93 for rules relating to the computation of the subgroup section 382 limitation.

(c) L1's net operating loss carryover from 1992 is not a pre-change subgroup attribute because it arose in a taxable year that was a SRLY with respect to the L group. See § 1.1502-94 for rules relating to the application of section 382 to L1's net operating loss carryover from 1992.

(g) **Net unrealized built-in gain and loss—(1) In general.** The determination whether a consolidated group (or loss subgroup) has a net unrealized built-in gain or loss under section 382(h)(3) is based on the aggregate amount of the separately computed net unrealized built-in gains or losses of each member that is included in the group (or loss subgroup) under paragraph (g)(2) of this section, and taking into account the items of built-in income and deduction described in section 382(h)(6). Thus, for example, amounts deferred under section 267, or under § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T (other than amounts deferred with respect to the stock or debt of a member that is included in the group (or loss subgroup) under paragraph (g)(2) of this section) are taken into account as built-in items. Net unrealized built-in gain or loss with respect to the stock and debt of members included in the group (or loss subgroup) under paragraph (g)(2) of this section is not taken into account in determining a member's separately computed net unrealized built-in gain or loss. The threshold requirement under section 382(h)(3)(B) applies on an aggregate basis and not on a member-by-member basis. If a member is not included in a group (or loss subgroup) under paragraph (g)(2) of this section, the determination of whether the member has a net unrealized built-in gain or loss under section 382(h)(3) is made on a separate entity basis. See §§ 1.1502-94(c) (relating to built-in gain and loss of a new loss member) and 1.1502-96(a) (relating to the end of separate tracking of certain losses).

(2) **Members included—(i) Consolidated group.** The members included in the determination whether a consolidated group has a net unrealized built-in gain or loss are all members other than:

(A) a new loss member with a net unrealized built-in loss described in § 1.1502-94(a)(1)(ii); and

(B) members of a loss subgroup described in § 1.1502-91(d)(2).

(ii) **Loss subgroup.** The members included in the determination whether a loss subgroup has a net unrealized built-in gain or loss are those members described in § 1.1502-91(d)(2)(i) and (ii).

(3) **Acquisition of built-in gain or loss assets.** A member may not, in determining its separately computed net unrealized built-in gain or loss, take into account any gain or loss with respect to assets acquired with a principal purpose to affect the amount of its net unrealized built-in gain or loss. A group may not, in determining its net unrealized built-in gain or loss, take into account any gain or loss with respect to assets of a member acquired with a principal purpose to affect the amount of its net unrealized built-in gain or loss.

(4) **Indirect ownership.** A member's separately computed net unrealized built-in gain or loss is adjusted to the extent necessary to prevent any duplication of unrealized gain or loss attributable to the member's indirect ownership interest in another member through a nonmember if the member has a 5-percent or greater ownership interest in the nonmember.

(h) **Recognized built-in gain or loss—(1) In general.** [Reserved]

(2) **Deposition of stock or debt of a member.** Gain or loss recognized by a member on the disposition of stock or debt of another member is taken into account (unless disallowed under § 1.1502-20 or otherwise) in determining recognized built-in gain or loss under section 382(h)(2), even though it is not taken into account under paragraph (g)(1) of this section in determining a net unrealized built-in gain or loss.

(3) **Intercompany transactions.** Gain or loss that is deferred under provisions such as section 267, § 1.1502-13, § 1.1502-13T, § 1.1502-14, § 1.1502-14T, and § 1.1502-19 is treated as recognized built-in gain or loss only to the extent restored during the recognition period.

(4) **Exchanged basis property.** If the adjusted basis of any asset is determined, directly or indirectly, in whole or in part, by reference to the adjusted basis of another asset held by the member at the beginning of the

recognition period, the asset is treated, with appropriate adjustments, as held by the member at the beginning of the recognition period.

(i) [Reserved]

(j) *Successor and predecessor.* A reference in §§ 1.502-91 through 1.502-99 to a corporation, member, common parent, loss subgroup parent, or subsidiary includes, as the context may require, a reference to a successor or predecessor. For example, the determination whether a successor satisfies the continuous affiliation requirement of paragraph (d)(2)(i) of this section is made by reference to its predecessor.

**§ 1.502-92 Ownership change of a loss group or a loss subgroup.**

(a) *Scope.* This section provides rules for determining if there is an ownership change for purposes of section 382 with respect to a loss group of a loss subgroup. See § 1.502-94 for special rules for determining if there is an ownership change with respect to new loss members and § 1.502-96(b) for special rules for determining if there is an ownership change of a subsidiary.

(b) *Determination of an ownership change—(1) Parent change method—(i) Loss group.* A loss group has an ownership change if the loss group's common parent has an ownership change under section 382(g) and § 1.382-2T. Solely for purposes of determining whether the common parent has an ownership change:

(A) The losses described in § 1.502-91(c)(1) are treated as net operating losses (or a net unrealized built-in loss) of the common parent; and

(B) Only those attributes that make the group a loss group under § 1.502-91(c)(1) are taken into account in determining the earliest day that the testing period for the common parent can begin under § 1.382-2T(d)(3).

(ii) *Loss subgroup.* A loss subgroup has an ownership change if the loss subgroup parent has an ownership change under section 382(g) and § 1.382-2T. The principles of § 1.502-95(b) (relating to ceasing to be a member of a consolidated group) apply in determining whether the loss subgroup parent has an ownership change. Solely for purposes of determining whether the loss subgroup parent has an ownership change:

(A) The losses described in § 1.502-91(d) are treated as net operating losses (or a net unrealized built-in loss) of the loss subgroup parent;

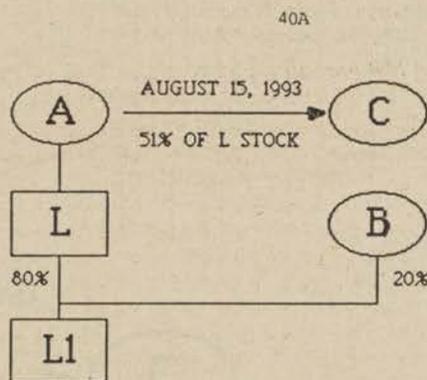
(B) The day that the members of the loss subgroup become members of the group (or a loss subgroup) is treated as a

testing date within the meaning of § 1.382-2T(a)(2)(i); and

(C) Only those attributes that make the members a loss subgroup under § 1.502-91(d) are taken into account in determining the earliest day that the testing period for the loss subgroup parent can begin under § 1.382-2T(d)(3).

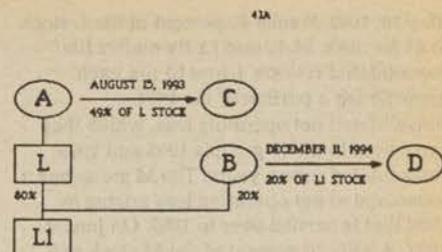
**(2) Examples.**

*Example 1. Loss group—ownership change of the common parent.* (a) A owns all the L stock. L owns 80 percent and B owns 20 percent of the L1 stock. For 1992, the L group has a consolidated net operating loss that resulted from the operations of L1 and that is carried over to 1993. The value of the L stock is \$600 and the value of the L1 stock held by B is \$120. The L group is a loss group under § 1.502-91(c)(1) because of its net operating loss carryover from 1992. On August 15, 1993, A sells 51 percent of the L stock to C.



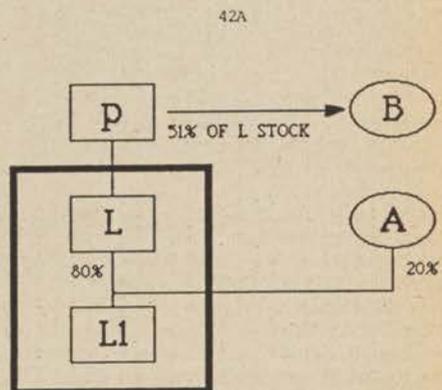
(b) Under paragraph (b)(1)(i) of this section, section 382 and § 1.382-2T are applied to L to determine whether it (and therefore the L loss group) has an ownership change with respect to its net operating loss carryover from 1992 attributable to L1 on August 15, 1993. The sale of the L stock to C causes an ownership change of L under § 1.382-2T and of the L loss group under paragraph (b)(1)(i) of this section. The amount of consolidated taxable income of the L loss group for any post-change taxable year that may be offset by its pre-change consolidated attributes (that is, the net operating loss carryover from 1992 attributable to L1) may not exceed the consolidated section 382 limitation for the L loss group for the taxable year.

*Example 2. Loss group—owner shifts of subsidiaries disregarded.* (a) The facts are the same as in Example 1, except that on August 15, 1993, A sells only 49 percent of the L stock to C and, on December 11, 1994, in an unrelated transaction, B sells the 20 percent of the L1 stock to D. A's sale of the L stock to C does not cause an ownership change of L under § 1.382-2T nor of the L loss group under paragraph (b)(1)(i) of this section.



(b) B's subsequent sale of L1 stock is not taken into account for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, and, accordingly, there is no ownership change of the L loss group. See paragraph (c) of this section, however, for a supplemental ownership change method that would apply to cause an ownership change if the purchases by C and D were pursuant to a plan or arrangement.

*Example 3. Loss subgroup—ownership change of loss subgroup parent controls.* (a) P owns all the L stock. L owns 80 percent and A owns 20 percent of the L1 stock. The P group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On September 9, 1993, P sells 51 percent of the L stock to B, and L1 is apportioned a portion of the 1992 consolidated net operating under § 1.502-21(b), which it carries over to its next taxable year. L and L1 file a consolidated return for their first taxable year ending after the sale to B.



(b) Under § 1.502-91(d)(1), L and L1 compose a loss subgroup on September 9, 1993, the day that they become members of the L group. Under paragraph (b)(1)(ii) of this section, section 382 and § 1.382-2T are applied to L to determine whether it (and therefore the L loss subgroup) has an ownership change with respect to the portion of the 1992 consolidated net operating loss that is apportioned to L1 on September 9, 1993. L has an ownership change resulting from P's sale of 51 percent of the L stock to B. Therefore, the L loss subgroup has an ownership change with respect to that loss.

*Example 4. Loss group and loss subgroup—contemporaneous ownership changes.* (a) A owns all the stock of corporation M, M owns 35 percent and B owns 65 percent of the L stock, and L owns all the L1 stock. The L group has a consolidated net operating loss arising in 1991 that is carried over to 1992. On

May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

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to possess any interest in the L stock. On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.



On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

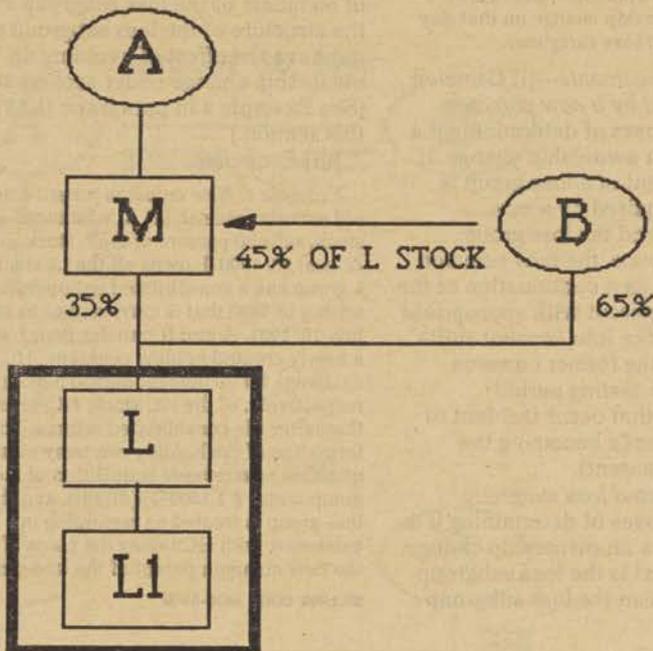
On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

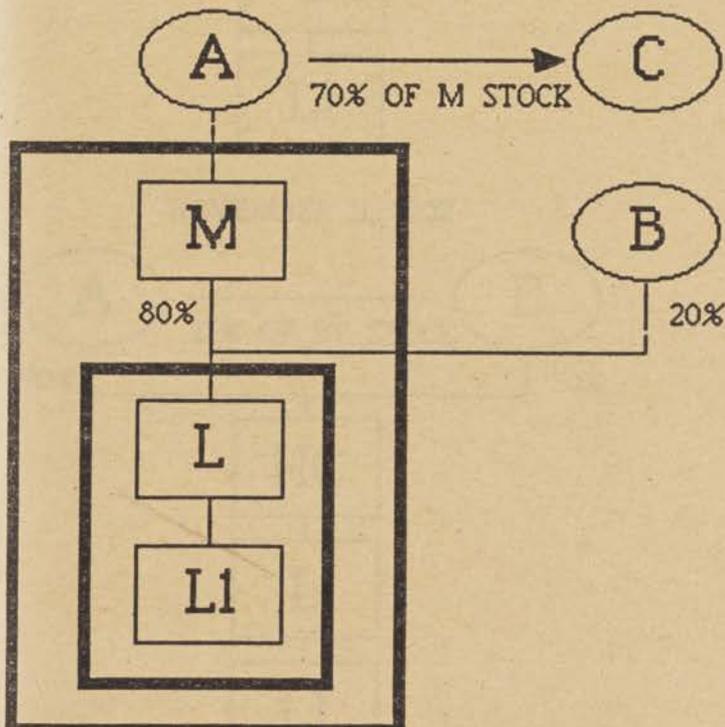
On May 19, 1992, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the 1991 consolidated net operating loss, which they carry over to the M group's 1992 and 1993 consolidated return years. The M group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On June 9, 1993, A sells 70 percent of the M stock to C.

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MAY 19, 1992



JUNE 9, 1993



(b) Under § 1.1502-91(d)(1), L and L1 compose a loss subgroup on May 19, 1992, the day they become members of the M group. Under paragraph (b)(1)(ii) of this section, section 382 and § 1.382-2T are applied to L to determine whether L (and therefore the L loss subgroup) has an ownership change with respect to the loss carryovers from 1991 on May 19, 1992, a testing date because of B's sale of L stock to M. The sale of L stock to M results in only a 45 percentage point increase in A's ownership of L stock. Thus, there is no ownership change of L (or the L loss subgroup) with respect to those loss carryovers under paragraph (b)(1)(ii) of this section on that day.

(c) June 9, 1993, is also a testing date with respect to the L loss subgroup because of A's sale of M stock to C. The sale results in a 56 percentage point increase in C's ownership of L stock, and L has an ownership change. Therefore, the L loss subgroup has an ownership change on that day with respect to the loss carryovers from 1991.

(d) Paragraph (b)(1)(i) of this section requires that section 382 and § 1.382-2T be applied to M to determine whether M (and therefore the M loss group) has an ownership change with respect to the net operating loss carryover from 1992 on June 9, 1993, a testing

date because of A's sale of M stock to C. The sale results in a 70 percentage point increase in C's ownership of M stock, and M has an ownership change. Therefore, the M loss group has an ownership change on that day with respect to that loss carryover.

(3) *Special adjustments*—(i) *Common parent succeeded by a new common parent.* For purposes of determining if a loss group has an ownership change, if the common parent of a loss group is succeeded or acquired by a new common parent and the loss group remains in existence, the new common parent is treated as a continuation of the former common parent with appropriate adjustments to take into account shifts in ownership of the former common parent during the testing period (including shifts that occur incident to the common parent's becoming the former common parent).

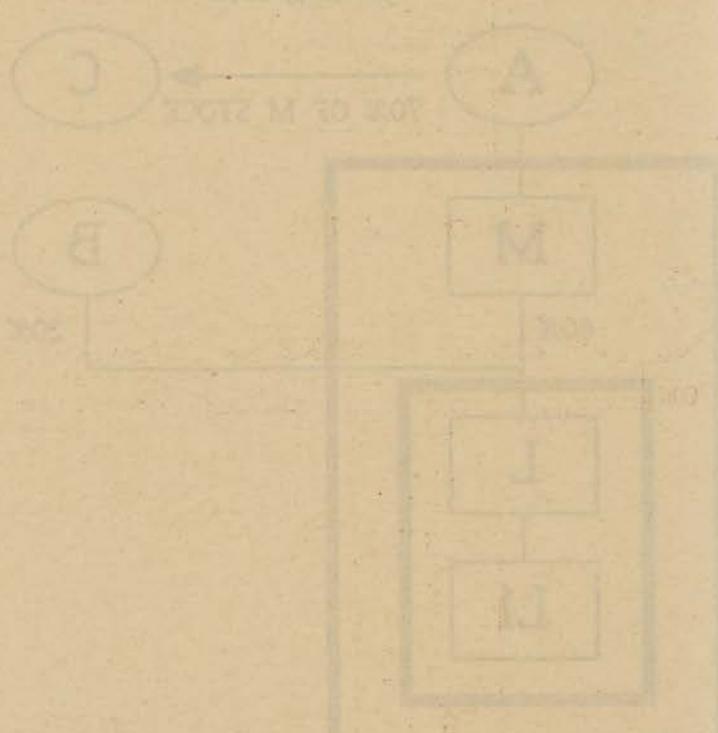
(ii) *Newly created loss subgroup parent.* For purposes of determining if a loss subgroup has an ownership change, if the member that is the loss subgroup parent has not been the loss subgroup

parent for at least 3 years as of a testing date, appropriate adjustments must be made to take into account owner shifts of members of the loss subgroup so that the structure of the loss subgroup does not have the effect of avoiding an ownership change under section 382. (See Example 3 in paragraph (b)(3)(iii) of this section.)

(iii) *Examples.*

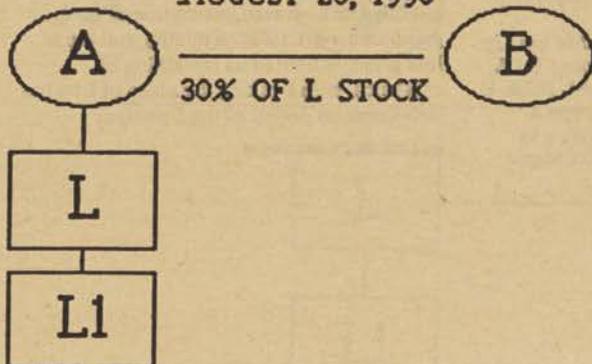
*Example 1. New common parent acquires old common parent.* (a) A, who owns all the L stock, sells 30 percent of the L stock to B on August 26, 1990. L owns all the L1 stock. The L group has a consolidated net operating loss arising in 1990 that is carried over to 1992. On July 16, 1991, A and B transfer their L stock to a newly created holding company, HC, in exchange for 70 percent and 30 percent, respectively, of the HC stock. HC, L, and L1 thereafter file consolidated returns. The formation of the holding company structure qualifies as a reverse acquisition of the L group under § 1.1502-75(d)(3)(i), and the L loss group is treated as remaining in existence, with HC taking the place of L as the new common parent of the loss group.

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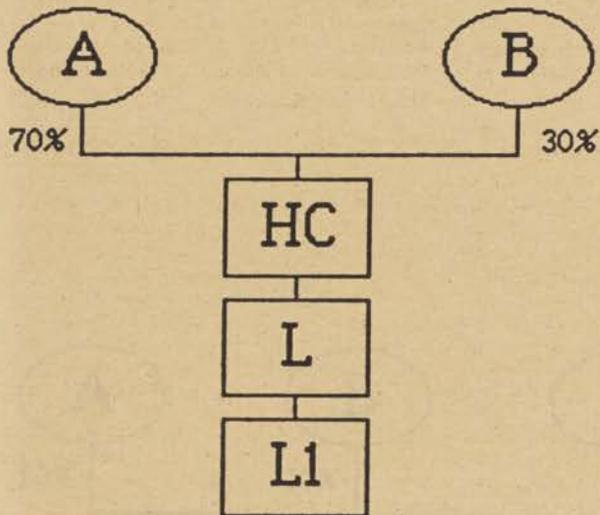


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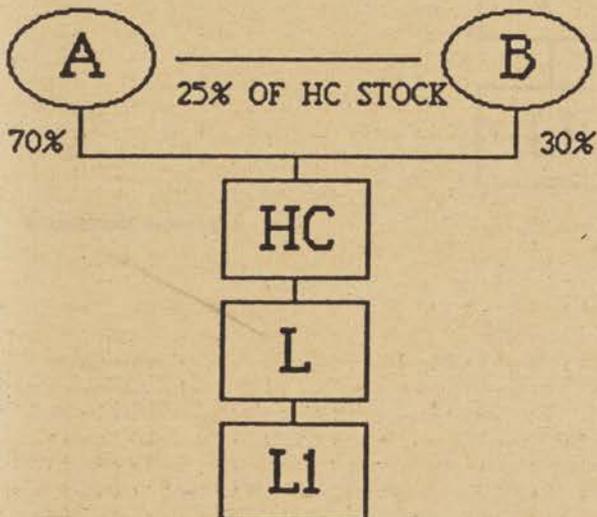
AUGUST 26, 1990



JULY 16, 1991



NOVEMBER 11, 1992



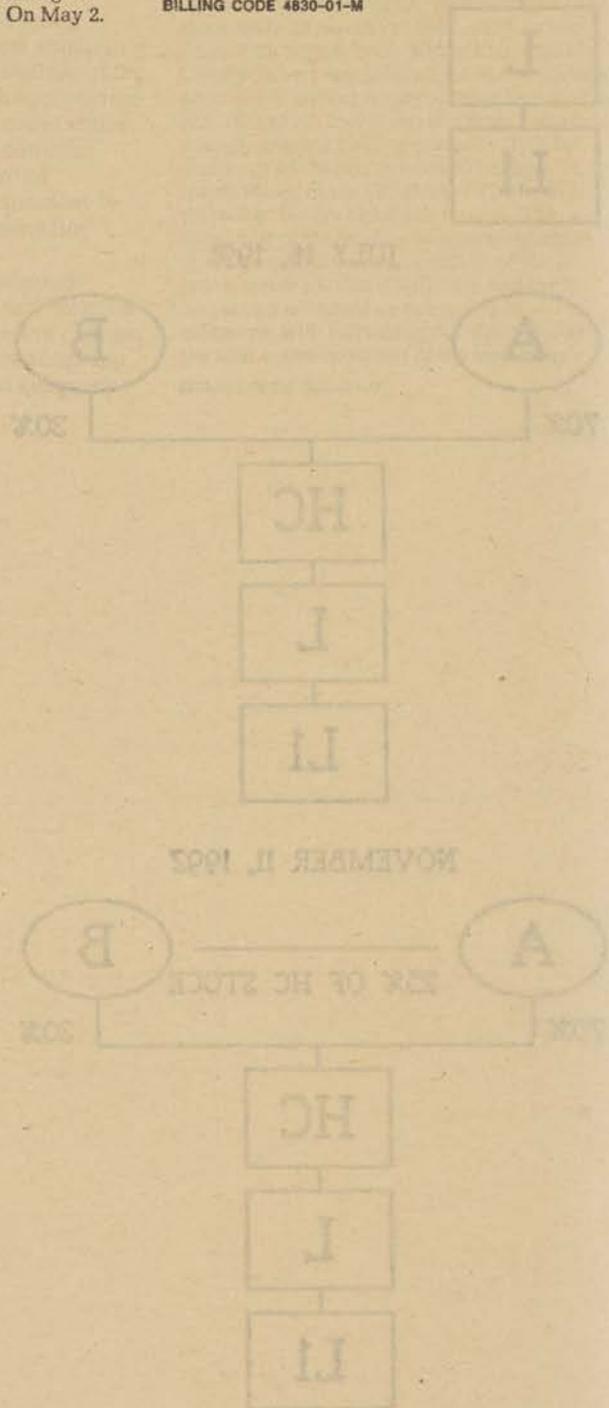
(b) On November 11, 1992, A sells 25 percent of the HC stock to B. For purposes of determining if the L loss group has an ownership change under paragraph (b)(1)(i) of this section on November 11, 1992, HC is treated as a continuation of L under paragraph (b)(3)(i) of this section because it acquired L and became the common parent without terminating the L loss group. Accordingly, HC's testing period commences on January 1, 1990, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to 1992 arose (see § 1.382-2T(d)(3)(i)).

Immediately after the close of November 11, 1992, B's percentage ownership interest in the common parent of the loss group (HC) has increased by 55 percentage points over its lowest percentage ownership during the testing period (zero percent). Accordingly, HC and the L loss group have an ownership change on that day.

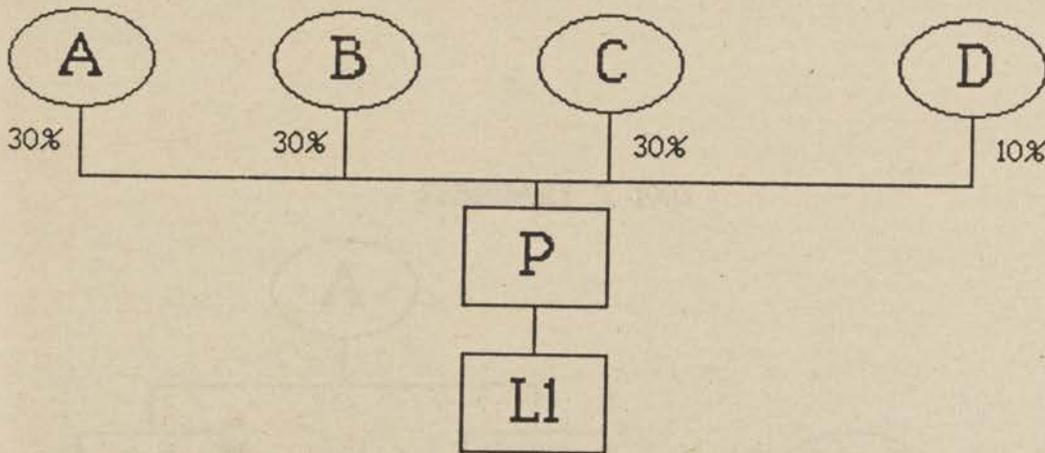
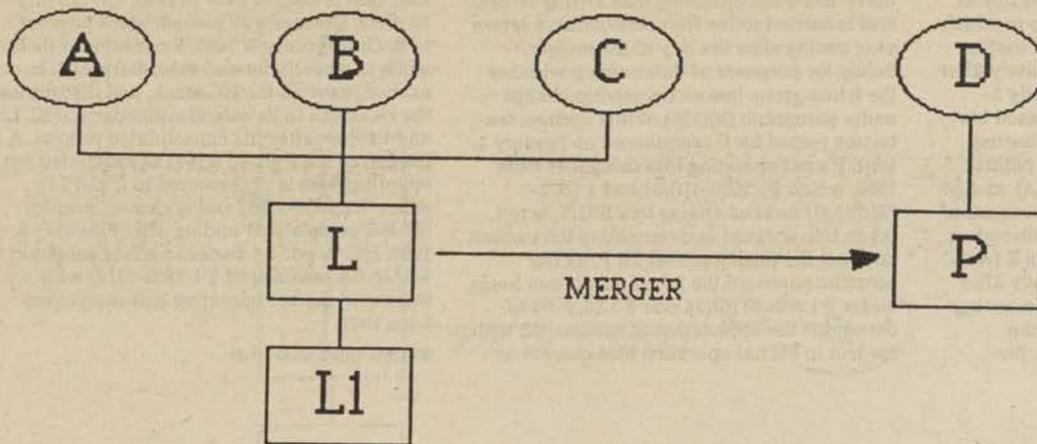
*Example 2. New common parent in case in which common parent ceases to exist.* (a) A, B, and C each own one-third of the L stock. L owns all the L1 stock. The L group has a consolidated net operating loss arising in 1991 that is carried over to 1993. On May 2,

1993, L is merged into P, a corporation owned by D, and L1 thereafter files consolidated returns with P, A, B, and C, as a result of owning stock of L, own 90 percent of P's stock after the merger. D owns the remaining 10 percent of P's stock. The merger of L into P qualifies as a reverse acquisition of the L group under § 1.1502-75(d)(3)(i), and the L loss group is treated as remaining in existence, with P taking the place of L as the new common parent of the L group.

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(b) For purposes of determining if the L loss group has an ownership change on May 2, 1993, the day of the merger, P is treated as a continuation of L so that the testing period for P begins on January 1, 1991, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to 1993 arose. Immediately after the close of May 2, 1993, D is the only 5-percent shareholder that has increased his ownership interest in P during the testing period (from zero to 10 percentage points).

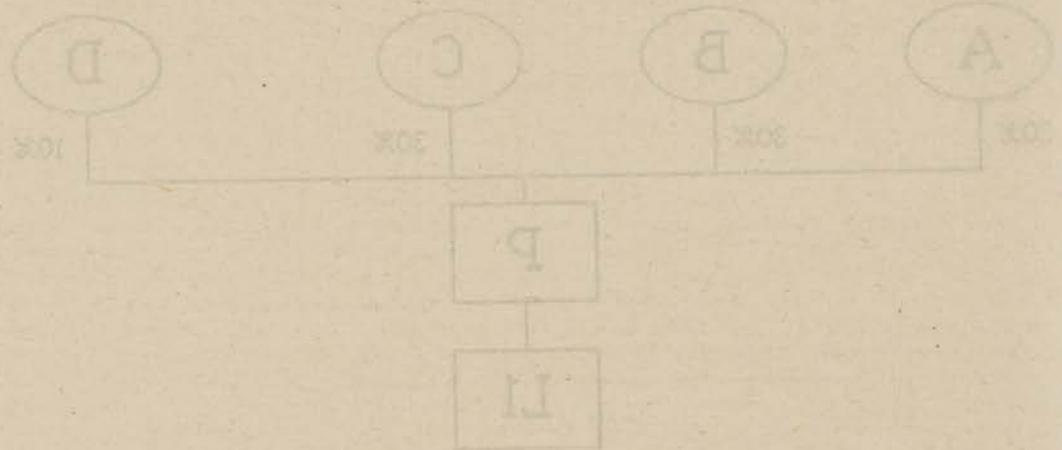
(c) The facts are the same as in (a), except that A has held 23 1/2 shares (23 1/2 percent) of L's stock for five years, and A purchased an additional 10 shares of L stock from E two years before the merger. Immediately after the close of the day of the merger (a testing date), A's ownership interest in P, the common parent of the L loss group, has

increased by 6% percentage points over her lowest percentage ownership during the testing period (23 1/2 percent to 30 percent).

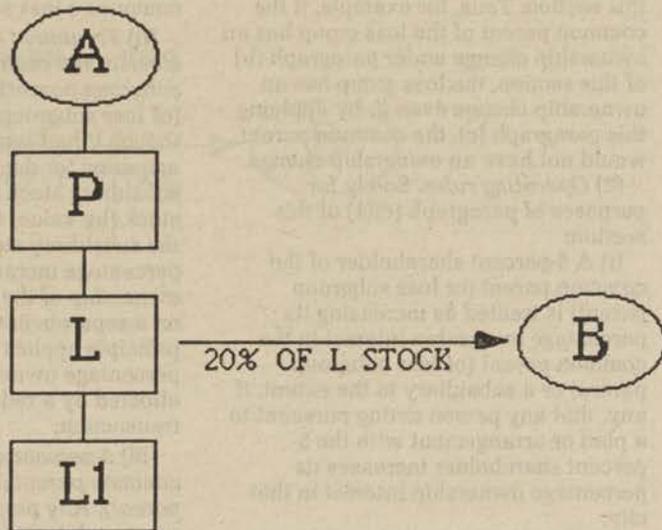
(d) The facts are the same as in (a), except that P has a net operating loss arising in 1990 that is carried to the first consolidated return year ending after the day of the merger. Solely for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, the testing period for P commences on January 1, 1991. P's net operating loss carryover from 1990, which §§ 1502-1(f)(3) and 1.1502-75(d)(3)(i) treat as arising in a SRLY, is not taken into account in determining the earliest day that the testing period for P, as the common parent of the L loss group, can begin under § 1.382-2T(d)(3). See § 1.1502-94 to determine the application of section 382 with respect to P's net operating loss carryover.

*Example 3. Newly acquired loss subgroup parent.* (a) P owns all the L stock and L owns all the L1 stock. The P group has a consolidated net operating loss arising in 1991 that is carried over to 1993. On January 19, 1992, L issues a 20 percent stock interest to B. On February 5, 1993, P contributes its L stock to a newly formed subsidiary, HC, in exchange for all the HC stock, and distributes the HC stock to its sole shareholder A. HC, L, and L1 thereafter file consolidated returns. A portion of the P group's 1991 consolidated net operating loss is apportioned to L and L1 under § 1.1502-21(b) and is carried over to the HC group's year ending after February 5, 1993. HC, L, and L1 compose a loss subgroup within the meaning of § 1.1502-91(d) with respect to the net operating loss carryovers from 1991.

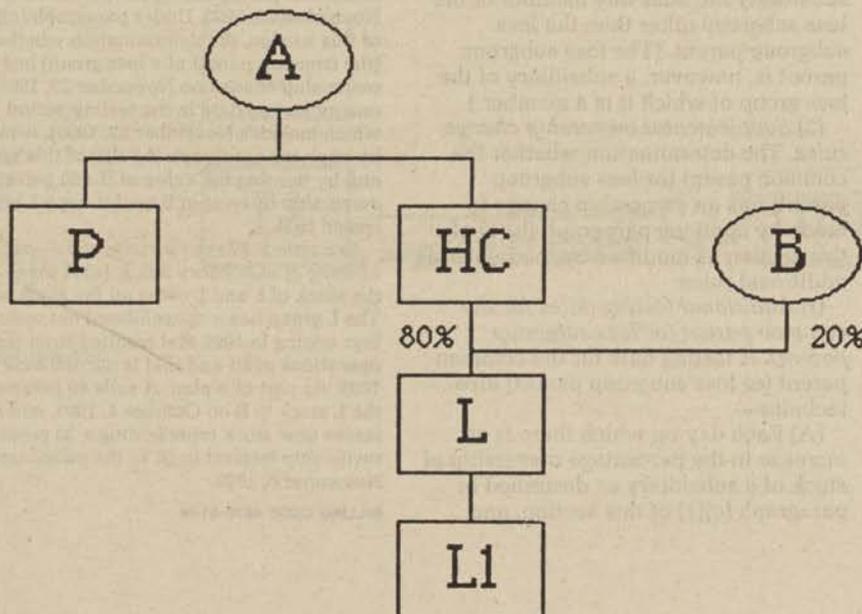
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FEBRUARY 5, 1993



(b) February 5, 1993, is a testing date for HC as the loss subgroup parent with respect to the net operating loss carryovers of L and L1 from 1991. See paragraph (b)(1)(ii)(B) of this section. For purposes of determining whether HC has an ownership change on the testing date, appropriate adjustments must be made with respect to the changes in the percentage ownership of the stock of HC because HC was not the loss subgroup parent for at least 3 years prior to the day on which it became a member of the HC loss subgroup (a testing date). The appropriate adjustments include adjustments to take into account owner shifts of other members of the former group. Thus, the owner shift of L that resulted from the sale of the 20 percent interest to B must be taken into account in determining whether the HC loss subgroup has an ownership change on February 5, 1993, and on any subsequent testing date that includes January 19, 1992.

(4) *End of separate tracking of certain losses.* If § 1.1502-96(a) (relating to the end of separate tracking of attributes) applies to a loss subgroup, then, while one or more members that were included in the loss subgroup remain members of the consolidated group, there is an ownership change with respect to their attributes described in § 1.1502-96(a)(2) only if the consolidated group is a loss group and has an ownership change under paragraph (b)(1)(i) of this section (or such a member has an ownership change under § 1.1502-96(b) (relating to ownership changes of subsidiaries)). If, however, the loss subgroup has had an ownership change before § 1.1502-96(a) applies, see § 1.1502-96(c) for the continuing application of the subgroup's section 382 limitation with respect to its prechange subgroup attributes.

(c) *Supplemental rules for determining ownership change—(1) In general.* Paragraph (c)(3) of this section applies to a loss group (or loss subgroup) if:

(i) Any 5-percent shareholder of the common parent (or loss subgroup parent) increases its percentage ownership interest in both—

(A) A subsidiary of the loss group (or loss subgroup) other than by a direct or indirect acquisition of stock of the common parent (or loss subgroup parent), and

(B) The common parent (or loss subgroup parent); and

(ii) Those increases occur within a 3 year period ending on any day of a consolidated return year or, if shorter, the period beginning on the first day following the most recent ownership change of the loss group (or loss subgroup).

The rules of paragraph (c)(3) of this section apply in addition to, and not instead of, the rules of paragraph (b) of this section. Thus, for example, if the common parent of the loss group has an ownership change under paragraph (b) of this section, the loss group has an ownership change even if, by applying this paragraph (c), the common parent would not have an ownership change.

(2) *Operating rules.* Solely for purposes of paragraph (c)(1) of this section:

(i) A 5-percent shareholder of the common parent (or loss subgroup parent) is treated as increasing its percentage ownership interest in the common parent (or loss subgroup parent) or a subsidiary to the extent, if any, that any person acting pursuant to a plan or arrangement with the 5-percent shareholder increases its percentage ownership interest in that city;

(ii) The rules in section 382(l)(3) and § 1.382-2T(h) (relating to constructive ownership) apply, except that section 382(l)(3) and § 1.382-2T(h)(4) (relating to option attribution) are applied with respect to the stock of the subsidiary—

(A) To treat an option as exercised (notwithstanding that the deemed exercise of an option may not result in an ownership change of the subsidiary) unless the exceptions of §§ 1.382-2T(h)(4) (viii) or (x) (relating to options that lapse or options that are not subject to deemed exercise) apply, and

(B) By treating any day of the 3 year period described in paragraph (c)(1)(ii) of this section on which an option is issued or transferred as a testing date; and

(iii) In the case of a loss subgroup, a subsidiary includes any member of the loss subgroup other than the loss subgroup parent. (The loss subgroup parent is, however, a subsidiary of the loss group of which it is a member.)

(3) *Supplemental ownership change rules.* The determination whether the common parent (or loss subgroup parent) has an ownership change is made by applying paragraph (b)(1) of this section as modified by the following additional rules:

(i) *Additional testing dates for the common parent (or loss subgroup parent).* A testing date for the common parent (or loss subgroup parent) also includes—

(A) Each day on which there is an increase in the percentage ownership of stock of a subsidiary as described in paragraph (c)(1) of this section, and

(B) The first day of the first consolidated return year for which the group is a loss group (or the members compose a loss subgroup);

(ii) *Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent).* The common parent (or loss subgroup parent) is treated as though it had issued to the person acquiring (or deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person's ownership of the subsidiary (determined on a separate entity basis). A similar principle applies if the increase in percentage ownership interest is effected by a redemption or similar transaction;

(iii) *5-percent shareholder of the common parent (or loss subgroup parent).* Any person described in paragraph (c)(2)(i) of this section who is acting pursuant to the plan or arrangement is treated as a 5-percent shareholder of the common parent (or loss subgroup parent).

(4) *Examples.*

*Example 1. Stock of the common parent under supplemental rules.* (a) A owns all the L stock. L is not a member of an affiliated group and has a net operating loss carryover arising in 1988 that is carried over to 1993. On July 16, 1993, L transfers all of its assets and liabilities to a newly created subsidiary, S, in exchange for S stock. L and S thereafter file consolidated returns. On November 23, 1993, B contributes cash to L in exchange for a 45-percent ownership interest in L and contributes cash to S for a 20-percent ownership interest in S.

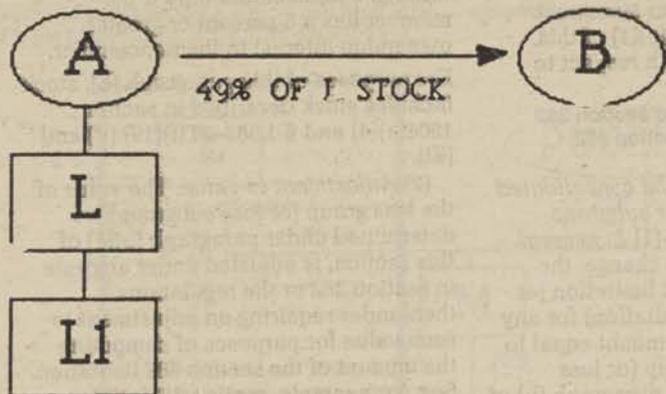
(b) B is a 5-percent shareholder of L who increases his percentage ownership interest in L and S during the 3-year period ending on November 23, 1993. Under paragraph (c)(3)(iii) of this section, the determination whether L (the common parent of a loss group) has an ownership change on November 23, 1993 (or on any testing date in the testing period which includes November 23, 1993), is made by applying paragraph (b)(1)(i) of this section and by treating the value of B's 20 percent ownership interest in S as if it were L stock issued to B.

*Example 2. Plan or arrangement—public offering of subsidiary stock.* (a) A owns all the stock of L and L owns all the stock of L1. The L group has a consolidated net operating loss arising in 1992 that resulted from the operations of L1 and that is carried over to 1993. As part of a plan, A sells 49 percent of the L stock to B on October 4, 1993, and L1 issues new stock representing a 20 percent ownership interest in L1 to the public on November 6, 1993.

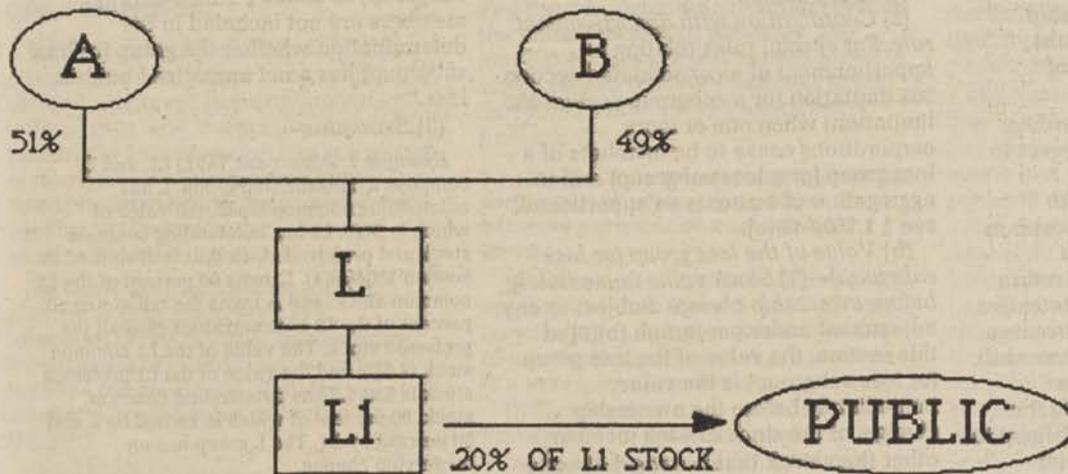
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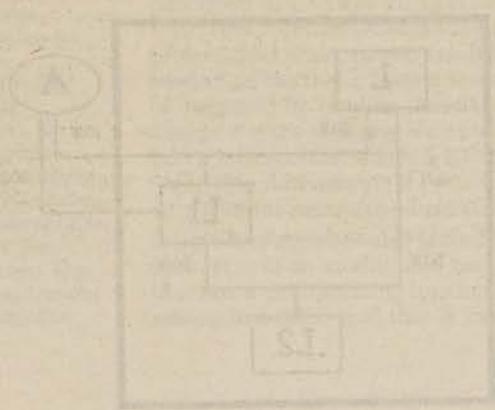
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(b) A's sale of the L stock to B does not cause an ownership change of the L loss group on October 4, 1993, under the rules of § 1.382-2T and paragraph (b)(1)(i) of this section.

(c) Because the issuance of L1 stock to the public occurs in connection with B's acquisition of L stock pursuant to a plan, paragraph (c)(3) of this section applies to determine whether the L loss group has an ownership change on November 6, 1993 (or on any testing date for which the testing period includes November 6, 1993).

(d) *Testing period following ownership change under this section.* If a loss group (or a loss subgroup) has had an ownership change under this section, the testing period for determining a subsequent ownership change with respect to the pre-change consolidated attributes (or pre-change subgroup attributes) begins no earlier than the first day following the loss group's (or loss subgroup's) most recent change date.

(e) *Information statements—(1) Common parent of a loss group.* The common parent of a loss group must file the information statement required by § 1.382-2T(a)(2)(ii) for a consolidated return year because of any owner shift, equity structure shift, or other transaction described in § 1.382-2T(a)(2)(i):

(i) With respect to the common parent and with respect to any subsidiary stock taken into account under paragraph (c) of this section, and

(ii) With respect to an ownership change described in § 1.1502-96(b) (relating to ownership changes of subsidiaries).

See § 1.1502-94(d) for rules regarding information statements with respect to attributes of subsidiaries.

(2) *Abbreviated statement with respect to loss subgroups.* The common parent of a group that has a loss subgroup during a consolidated return year must file the information statement required by § 1.382-2T(a)(2)(ii) because of any owner shift, equity structure shift, or other transaction described in § 1.382-2T(a)(2)(i) with respect to the loss subgroup parent and with respect to any other stock taken into account under paragraph (c) of this section.

Instead of filing a separate statement for each loss subgroup parent, the common parent (which is treated as a loss corporation) may file the single statement described in paragraph (e)(1) of this section. In addition to the information concerning stock ownership of the common parent, the single statement must identify each loss subgroup parent and state which loss subgroups, if any, have had ownership changes during the consolidated return year. The loss subgroup parent is, however, still required to maintain the records necessary to determine if the

loss subgroup has an ownership change. This paragraph (e)(2) applies with respect to the attributes of a loss subgroup until, under § 1.1502-96(a), the attributes are no longer treated as described in § 1.1502-91(d) (relating to the definition of loss subgroup). After that time, the information statement described in paragraph (e)(1) of this section must be filed with respect to those attributes.

**§ 1.1502-93 Consolidated section 382 limitation (or subgroup section 382 limitation).**

(a) *Determination of the consolidated section 382 limitation (or subgroup section 382 limitation)—(1) In general.* Following an ownership change, the consolidated section 382 limitation (or subgroup section 382 limitation) for any post-change year is an amount equal to the value of the loss group (or loss subgroup), as defined in paragraph (b) of this section, multiplied by the long-term tax-exempt rate that applies with respect to the ownership change, and adjusted as required by section 382 and the regulations thereunder. See, for example, section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(m)(2) (relating to short taxable years), and section 382(h) (relating to recognized built-in gains and section 338 gains).

(2) *Coordination with apportionment rule.* For special rules relating to apportionment of a consolidated section 382 limitation (or a subgroup section 382 limitation) when one or more corporations cease to be members of a loss group (or a loss subgroup) and to aggregation of amounts so apportioned, see § 1.1502-95(c).

(b) *Value of the loss group (or loss subgroup)—(1) Stock value immediately before ownership change.* Subject to any adjustment under paragraph (b)(2) of this section, the value of the loss group (or loss subgroup) is the value, immediately before the ownership change, of the stock of each member, other than stock that is owned directly

or indirectly by another member. For this purpose:

(i) Ownership is determined under § 1.382-2T; and

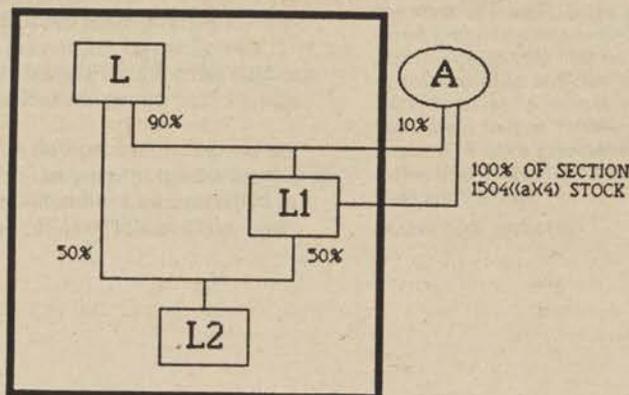
(ii) A member is considered to indirectly own stock of another member through a nonmember only if the member has a 5-percent or greater ownership interest in the nonmember.

For purposes of this paragraph (b), stock includes stock described in section 1504(a)(4) and § 1.382-2T(f)(19) (ii) and (iii).

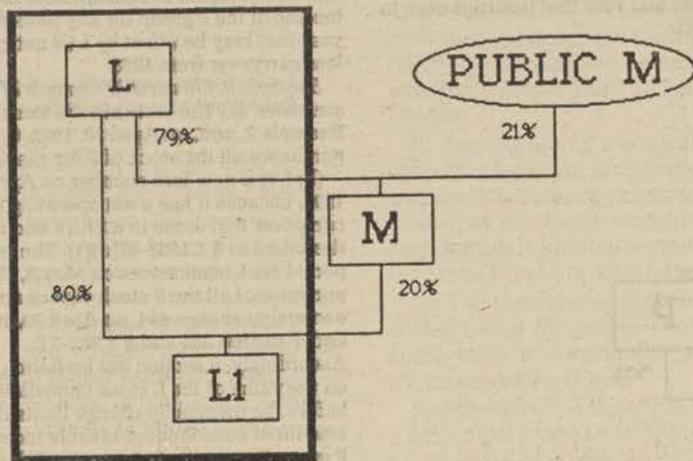
(2) *Adjustment to value.* The value of the loss group (or loss subgroup), as determined under paragraph (b)(1) of this section, is adjusted under any rule in section 382 or the regulations thereunder requiring an adjustment to such value for purposes of computing the amount of the section 382 limitation. See, for example, section 382(e)(2) (redemptions and corporate contractions), section 382(l)(1) (certain capital contributions) and section 382(l)(4) (ownership of substantial nonbusiness assets). The value of the loss group (or loss subgroup) determined under this paragraph (b) is also adjusted to the extent necessary to prevent any duplication of the value of the stock of a member. For example, the principles of § 1.382-5 (relating to controlled groups of corporations) apply in determining the value of a loss group (or loss subgroup) if, under § 1.1502-91(g)(2), members are not included in the determination whether the group (or loss subgroup) has a net unrealized built-in loss.

(3) *Examples.*

*Example 1. Basic case.* (a) L, L1, and L2 compose a consolidated group. L has outstanding common stock, the value of which is \$100. L1 has outstanding common stock and preferred stock that is described in section 1504(a)(4). L owns 90 percent of the L1 common stock, and A owns the remaining 10 percent of the L1 common stock plus all the preferred stock. The value of the L1 common stock is \$40, and the value of the L1 preferred stock is \$30. L2 has outstanding common stock, 50 percent of which is owned by L and 50 percent by L1. The L group has an ownership change.



(b) Under paragraph (b)(1) of this section, the L group does not include the value of the stock of any member that is owned directly or indirectly by another member in computing its consolidated section 382 limitation. Accordingly, the value of the stock of the loss group is \$134, the sum of the value of (1) the common stock of L (\$100), (2) the 10 percent of the L1 common stock (\$4) owned by A, and (3) the L1 preferred stock (\$30) owned by A.



(b) Under paragraph (b)(1) of this section, because of L's more than 5 percent ownership interest in M, a nonmember, L is considered to indirectly own 15.8 shares of the L1 stock held by M (79% × 20 shares). The value of the L loss group is \$104.20, the sum of the values of (1) the L stock (\$100) and (2) the L1 stock not owned directly or indirectly by L (21% × \$20, or \$4.20).

(c) *Recognized built-in gain of a loss group or loss subgroup.* If a loss group (or loss subgroup) has a net unrealized built-in gain, any recognized built-in gain of the loss group (or loss subgroup) is taken into account under section 382(h) in determining the consolidated section 382 limitation (or subgroup section 382 limitation).

(d) *Continuity of business—(1) In general.* A loss group (or a loss subgroup) is treated as a single entity for purposes of determining whether it satisfies the continuity of business enterprise requirement of section 382(c)(1).

(2) *Example. Continuity of business enterprise.* L owns all the stock of two subsidiaries, L1 and L2. The L group has an ownership change. It has prechange consolidated attributes attributable to L2. Each of the members has historically conducted a separate line of business. Each line of business is approximately equal in value. One year after the ownership change, L discontinues its separate business and the business of L2. The separate business of L1 is continued for the remainder of the 2 year period following the ownership change. The continuity of business enterprise requirement of section 382(c)(1) is met even though the

*Example 2. Indirect ownership.* (a) L and L1 compose a consolidated group. L's stock has a value of \$100. L owns 80 shares (80 percent) and corporation M owns 20 shares (20 percent) of the L1 stock. L owns 79 percent of the stock of corporation M. The 20 shares of the L1 stock not owned directly by L have a fair market value of \$20. The L group has an ownership change.

separate businesses of L and L2 are discontinued.

(e) *Limitations of losses under other rules.* If a section 382 limitation for a post-change year exceeds the consolidated taxable income that may be offset by pre-change attributes for any reason, including the application of the limitation of § 1.1502-21(c), the amount of the excess is carried forward under section 382(b)(2) (relating to the carryforward of unused section 382 limitation).

**§ 1.1502-94 Coordination with section 382 and § 1.382-2T when a corporation becomes a member of a consolidated group.**

(a) *Scope—(1) In general.* This section applies section 382 and § 1.382-2T to a corporation that is a new loss member of a consolidated group. A corporation is a new loss member if it:

(i) Carries over a net operating loss that arose (or is treated under § 1.1502-21(c) as arising) in a SRLY and is not described in § 1.1502-91(d)(1); or

(ii) Has a net unrealized built-in loss (determined under paragraph (c) of this section on the day it becomes a member of the group by treating that day as though it were a change date) that is not taken into account under § 1.1502-91(d)(2) in determining if two or more corporations compose a loss subgroup. A new loss member also includes any successor to an unaffiliated corporation that has a net operating loss carryover arising in a SRLY and that is treated as

remaining in existence under § 1.362-2T(f)(1)(ii) following a transaction described in section 381(a) in which it merges into a member. See section 382(a) and § 1.1502-96(c) for the continuing effect of an ownership change after a corporation becomes or ceases to be a member.

(2) *Coordination in the case of a loss subgroup.* For rules regarding the determination of whether there is an ownership change of a loss subgroup with respect to a net operating loss or a net unrealized built-in loss described in § 1.1502-91(d) (relating to the definition of loss subgroup) and the computation of a subgroup section 382 limitation following such an ownership change, see §§ 1.1502-92 and 1.1502-93.

(3) *End of separate tracking of certain losses.* If § 1.1502-96(a) (relating to the end of separate tracking of attributes) applies to a new loss member, then, while that member remains a member of the consolidated group, there is an ownership change with respect to its attributes described in § 1.1502-96(a)(2) only if the consolidated group is a loss group and has an ownership change under § 1.1502-92(b)(1)(i) (or that member has an ownership change under § 1.1502-96(b) (relating to ownership changes of subsidiaries)). If, however, the new loss member has had an ownership change before § 1.1502-96(a) applies, see § 1.1502-96(c) for the continuing application of the section 382 limitation with respect to the member's pre-change losses.

(b) *Application of section 382 to a new loss member—(1) In general.* Section 382 and the regulations thereunder apply to a new loss member to determine, on a separate entity basis, whether and to what extent a section 382 limitation applies to limit the amount of consolidated taxable income that may be offset by the new loss member's pre-change separate attributes. For example, if an ownership change with respect to the new loss member occurs under section 382 and § 1.382-2T, the amount of consolidated taxable income for any post-change year that may be offset by the new loss member's pre-change separate attributes shall not exceed the section 382 limitation as determined separately under section 382(b) with respect to that member for such year. If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the section 382 limitation of the new loss member does not apply to the portion of the taxable income for such year that is allocable to the period in such year on or before the change date.

(2) *Adjustment to value.* The value of the new loss member is adjusted to the extent necessary to prevent any duplication of the value of the stock of a member. For example, the principles of § 1.382-5 (relating to controlled groups of corporations) apply in determining the value of a new loss member.

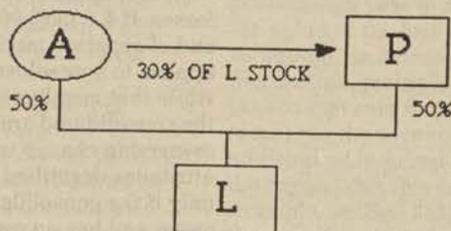
(3) *Pre-change separate attribute defined.* A pre-change separate attribute of a new loss member is:

- (i) Any net operating loss carryover of the new loss member described in paragraph (a)(1) of this section; and  
 (ii) Any recognized built-in loss of the new loss member.

(4) *Examples.*

*Example 1. Basic case.* (a) A and P each own 50 percent of the L stock. On December 19, 1991, P purchases 30 percent of the L stock from A for cash. L has net operating losses arising in 1986 and 1987 that it carries over to 1991 and 1992.

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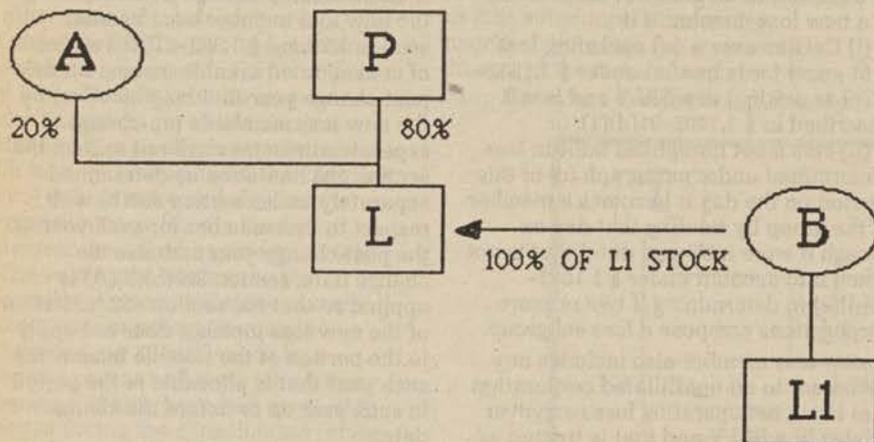
(b) L is a new loss member because it has net operating loss carryovers that arose in a SRLY and are not described in § 1.1502-91(d). Under section 382 and § 1.382-2T, L is a loss corporation on December 19, 1991, that day is a testing date for L, and the testing period for L commences on December 20, 1988.

(c) P's purchase of L stock does not cause an ownership change of L on December 19, 1991, with respect to the net operating loss

carryovers from 1986 and 1987 under section 382 and § 1.382-2T. The use of the loss carryovers, however, is subject to limitation under § 1.1502-21(c).

*Example 2. Multiple new loss members.* (a) The facts are the same as in Example 1, and, on December 31, 1991, L purchases all the stock of L1 from B for cash. L1 has a net operating loss of \$40 arising in 1988 that it carries over to 1992.

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(b) L1 is a new loss member because it has a net operating loss carryover from 1988 that arose in a SRLY and is not described in § 1.1502-91(d)(1).

(c) L's purchase of all the stock of L1 causes an ownership change of L1 on December 31, 1991, under section 382 and § 1.382-2T. Accordingly, a section 382 limitation based on the value of the L1 stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's net operating loss carryover from 1988.

*Example 3. Ownership changes of new loss members.* (a) The facts are the same as in Example 2, and, on April 30, 1992, C purchases all the stock of P for cash.

(b) L is a new loss member on April 30, 1992, because it has a net operating loss carryover that arose in a SRLY and is not described in § 1.1502-91(d)(1). The testing period for L commences on May 2, 1989. C's purchase of all the P stock causes an ownership change of L on April 30, 1992, under section 382 and § 1.382-2T. Accordingly, a section 382 limitation based on the value of the L stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L's net operating loss carryovers from 1986 and 1987. The use of those carryovers is also subject to limitation under § 1.1502-21(c).

(c) For purposes of determining whether there is an ownership change of the P group on April 30, 1992, see § 1.1502-96(a) for the rule that treats L1's net operating loss carryover from 1988 as a loss that did not arise in a SRLY with respect to the P group.

(c) *Built-in gains and losses.* As the context may require, the principles of §§ 1.1502-91 (g) and (h) and § 1.1502-93(c) (relating to built-in gains and losses) apply to a new loss member on a separate entity basis.

(d) *Information statements.*—The common parent of a consolidated group that has a new loss member subject to paragraph (b)(1) of this section during a consolidated return year must file the information statement required by § 1.382-2T(a)(2)(ii) because of any owner shift, equity structure shift, or other transaction described in § 1.382-2T(a)(2)(i) with respect to the new loss member. Instead of filing a separate statement for each new loss member the common parent may file a single statement described in § 1.382-2T(a)(2)(ii) with respect to the stock ownership of the common parent (which is treated as a loss corporation). In addition to the information concerning stock ownership of the common parent, the single statement must identify each new loss member and state which new loss members, if any, have had ownership changes during the consolidated return year. The new loss member is, however, required to

maintain the records necessary to determine if it has an ownership change. This paragraph (d) applies with respect to a new loss member until, under § 1.1502-96(a), the attributes of the new loss member are no longer treated as described in paragraph (a)(1) of this section. After that time, the information statement described in § 1.1502-92(e)(1) must be filed with respect to these attributes.

**§ 1.1502-95 Rules on ceasing to be a member of a group (or loss subgroup).**

(a) *Scope*—(1) *In general.* This section provides rules for apportioning the consolidated section 382 limitation (or subgroup section 382 limitation) and for determining ownership changes on or after the day a corporation ceases to be a member of a consolidated group (or loss subgroup). As the context requires, a reference in this section to a loss group, a member, or a corporation also includes a reference to a loss subgroup, and a reference to a consolidated section 382 limitation also includes a reference to a subgroup section 382 limitation.

(2) *Election by common parent.* Only the common parent (not the loss subgroup parent) may make the election under paragraph (c) of this section to apportion either a consolidated section 382 limitation or a subgroup section 382 limitation.

(3) *Coordination with §§ 1.1502-91 through 1.1502-93.* For rules regarding the determination of whether there is an ownership change of a loss subgroup and the computation of a subgroup section 382 limitation following such an

ownership change, see §§ 1.1502-91 through 1.1502-93.

(b) *Separate application of section 382 when a member leaves a group*—(1) *In general.* Except as provided in §§ 1.1502-91 through 1.1502-93 (relating to rules applicable to loss groups and loss subgroups), section 382 and the regulations thereunder apply to a corporation on a separate entity basis after it ceases to be a member of a consolidated group (or loss subgroup). Solely for purposes of determining whether a corporation has an ownership change:

(i) Any portion of a consolidated net operating loss that is apportioned to the corporation under § 1.1502-21(b) is treated as a net operating loss of the corporation beginning on the first day of the taxable year in which the loss arose;

(ii) The testing may include the period during which (or before which) the corporation was a member of the group (or loss subgroup); and

(iii) The day it ceases to a member of a consolidated group is treated as a testing date of the corporation within the meaning of § 1.332-2T(a)(2)(i).

(2) *Effect of a prior ownership change of the group.* If a loss group has had an ownership change under § 1.1502-92 before a corporation ceases to be a member of a consolidated group (the former member):

(i) Any pre-change consolidated attribute that is subject to a consolidated section 382 limitation continues to be treated as a pre-change loss with respect to the former member;

(ii) The former member's section 382 limitation with respect to such attribute is zero except to the extent the common parent apportions under paragraph (c) of

this section all or a part of the consolidated section 382 limitation to the former member;

(iii) The testing period for determining a subsequent ownership change with respect to such attribute begins no earlier than the first day following the loss group's most recent change date; and

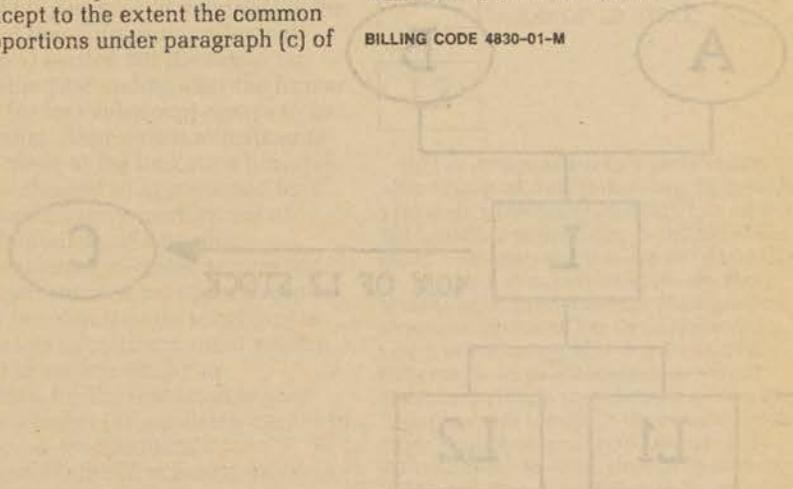
(iv) As generally provided under section 382, an ownership change of the former member that occurs on or after the day it ceases to be a member of a loss group may result in an additional, lesser limitation amount with respect to such loss.

(3) *Application in the case of a loss subgroup.* If two or more former members are included in the same loss subgroup immediately after they cease to be members of a consolidated group, the principles of paragraphs (b) and (c) of this section apply to the loss subgroup. Therefore, for example, an apportionment by the common parent under paragraph (c) of this section is made to the loss subgroup rather than separately to its members.

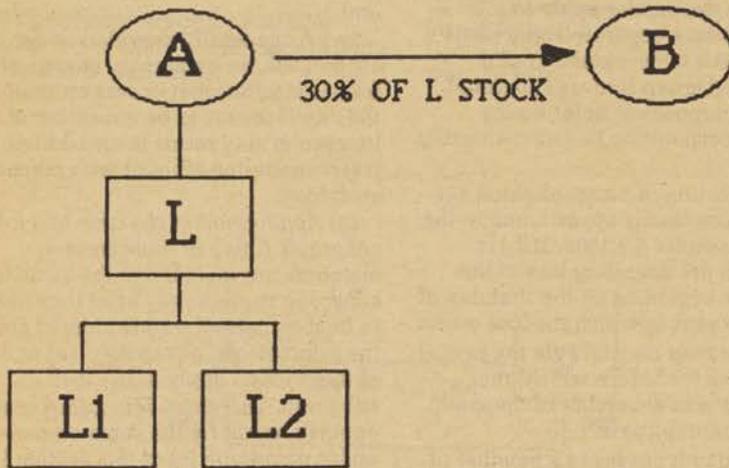
**(4) Examples.**

*Example 1. Treatment of departing member as a separate corporation throughout the testing period.* (a) A owns all the L stock. L owns all the stock of L1 and L2. The L group has a consolidated net operating loss arising in 1991 and that is carried over to 1993. On January 12, 1992, A sells 30 percent of the L stock to B. On February 7, 1993, L sells 40 percent of the L2 stock to C, and L2 ceases to be a member of the group. A portion of the 1991 consolidated net operating loss is apportioned to L2 under § 1.1502-21(b) and is carried to L2's first separate return year, which ends December 31, 1993.

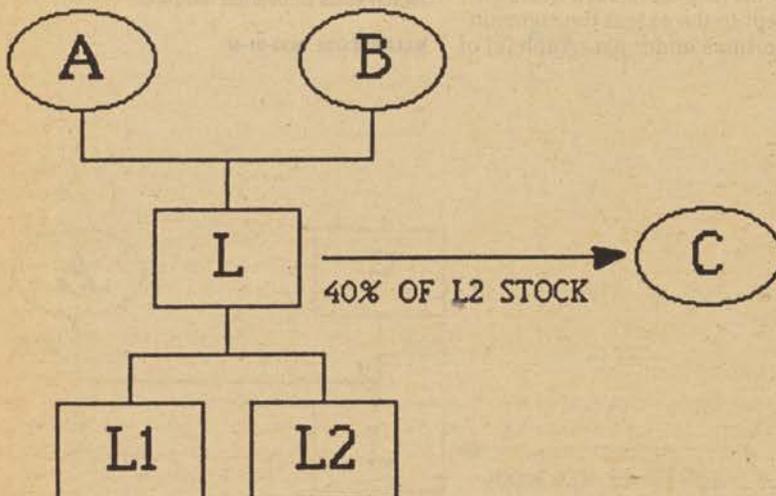
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FEBRUARY 7, 1993



(b) Under paragraph (b)(1) of this section, L2 is a loss corporation on February 7, 1993. Under paragraph (b)(1)(iii) of this section February 7, 1993, is a testing date. Under paragraph (b)(1)(ii) of this section, the testing period for L2 with respect to this testing date commences on January 1, 1991, the first day of the taxable year in which the portion of the consolidated net operating loss apportioned to L2 arose. Therefore, in determining whether L2 has an ownership change on February 7, 1993, B's purchase of 30 percent of the L stock and C's purchase of 40 percent of the L2 stock are taken into account. L2 has an ownership change under section 382(g) and § 1.382-2T because B and C have increased their ownership interests in L2 by 18 and 40 percentage points, respectively, during the testing period.

*Example 2. Effect of prior ownership change of loss group.* (a) L owns all the L1 stock and L1 owns all the L2 stock. The L loss group has an ownership change under § 1.1502-92 in 1992 with respect to a consolidated net operating loss arising in 1991 and carried over to 1992 and 1993. The consolidated section 382 limitation computed solely on the basis of the value of the stock of L is \$100. On December 31, 1992, L1 sells a 25 percent of the stock of L2 to B. L2 is apportioned a portion of the 1991 consolidated net operating loss which it carries over to its first separate return year ending after December 31, 1992. L2's separate section 382 limitation with respect to this loss is zero unless L elects to apportion all or a part of the consolidated section 382 limitation to L2. (See paragraph (c) of this section for rules regarding the apportionment of a consolidated section 382 limitation.) L apportions \$50 of the consolidated section 382 limitation to L2.

(b) On December 31, 1993, L1 sells its remaining 75 percent stock interest in L2 to C, resulting in an ownership change of L2. L2's section 382 limitation computed on the change date with respect to the value of its stock is \$30. Accordingly, L2's, section 382 limitation for post-change years ending after December 31, 1993, with respect to its pre-change losses, including the consolidated net operating losses, including the consolidated net operating losses apportioned to it from the L group, is \$30, adjusted as required by section 382 and the regulations thereunder.

(c) *Apportionment of the consolidated section 382 limitation—(1) Apportioned by common parent.* The common parent may elect to apportion all or any part of a consolidated section 382 limitation to a former member (or loss subgroup). For purposes of this apportionment, the consolidated section 382 limitation determined under § 1.1502-93 consists of two elements.

(i) The value element, which is the element of the limitation determined under section 382(b)(1) (relating to value multiplied by the long-term tax-exempt rate) without regard to such adjustments as those described in section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382

limitation for the post-change year that includes the change date), section 382(h) (relating to built-in gains and section 338 gains), and section 382(m)(2) (relating to short taxable years); and,

(ii) The adjustment element, which is so much (if any) of the limitation for the taxable year during which the former member ceases to be a member of the consolidated group that is attributable to a carryover of unused limitation under section 382(b)(2) or to recognized built-in gains under 382(h).

The common parent may apportion to the former member (or loss subgroup) all or any part of each element described in the preceding sentence. See paragraph (e) of this section for the time and manner of making the election to apportion.

(2) *Effect of apportionment on the consolidated section 382 limitation.* The value element of the consolidated section 382 limitation for any post-change year ending after the day that a former member (or loss subgroup) ceases to be a member(s) is reduced to the extent that it is apportioned under this paragraph (c). The consolidated section 382 limitation for the post-change year in which the former member (or loss subgroup) ceases to be a member(s) is also reduced to the extent that the adjustment element for that year is apportioned under this paragraph (c).

(3) *Effect on corporations to which the consolidated section 382 limitation is apportioned.* The amount of the value element that is apportioned to a former member (or loss subgroup) is treated as the amount determined under section 382(b)(1) for purposes of determining the amount of that corporation's (or loss subgroup's) section 382 limitation for any taxable year ending after the former member (or loss subgroup) ceases to be a member(s). Appropriate adjustments must be made to the limitation based on the value element so apportioned for a short taxable year, carryforward of unused limitation, or any other adjustment required under section 382. The adjustment element apportioned to a former member (or loss subgroup) is treated as an adjustment under section 382(b)(2) or section 382(h), as appropriate, for the first taxable year after the member (or members) ceases to be a member (or members).

(4) *Deemed apportionment when loss group terminates.* If a loss group terminates, to the extent the consolidated section 382 limitation is not apportioned under paragraph (c)(1) of this section, the consolidated section 382 limitation is deemed to be apportioned to the loss subgroup that includes the

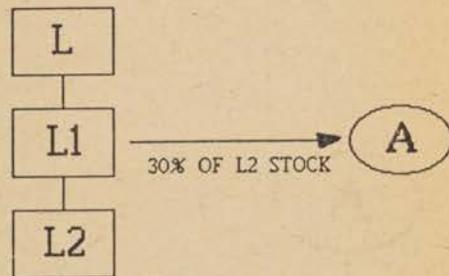
common parent, or, if there is no loss subgroup that includes the common parent immediately after the loss group terminates, to the common parent. A loss group terminates on the first day of the first taxable year that is a separate return year with respect to each member of the former loss group.

(5) *Appropriate adjustments when former member leaves during the year.* Appropriate adjustments are made to the consolidated section 382 limitation for the consolidated return year during which the former member (or loss subgroup) ceases to be a member(s) to reflect the inclusion of the former member in the loss group for a portion of that year.

(6) *Examples.*

*Example 1. Consequence of apportionment.* (a) L owns all the L1 stock and L1 owns all the L2 stock. The L group has a \$200 consolidated net operating loss arising in 1991 that is carried over to 1992. At the close of December 31, 1991, the group has an ownership change under § 1.1502-92. The ownership change results in a consolidated section 382 limitation of \$10 based on the value of the stock of the group. On August 29, 1992, L1 sells 30 percent of the stock of L2 to A. L2 is apportioned \$90 of the group's \$200 consolidated net operating loss under § 1.1502-21(b). L, the common parent, elects to apportion \$6 of the consolidated section 382 limitation to L2.

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(b) For its separate return years ending after August 29, 1992 (other than the taxable year ending December 31, 1992), L2's section 382 limitation with respect to the \$90 of the group's net operating loss apportioned to it is \$6, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment. For its consolidated return years ending after August 29, 1992, (other than the year ending December 31, 1992) the L group's consolidated section 382 limitation with respect to the remaining \$110 of pre-change consolidated attribute is \$4 (\$10 minus the \$6 value element apportioned to L2), adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment.

(c) For the L group's consolidated return year ending December 31, 1992, the value element of its consolidated section 382 limitation is increased by \$4 (rounded to the nearest dollar), to account for the period

during which L2 was a member of the L group (\$8, the consolidated section 382 limitation apportioned to L2, times 241/365, the ratio of the number of days during 1992 that L2 is a member of the group to the number of days in the group's consolidated return year). See paragraph (c)(5) of this section. Therefore, the value element of the consolidated section 382 limitation for 1992 of the L group is \$8 (rounded to the nearest dollar).

(d) The section 382 limitation for L2's short taxable year ending December 31, 1992, is \$2 (rounded to the nearest dollar), which is the amount that bears the same relationship to \$8, the value element of the consolidated section 382 limitation apportioned to L2, as the number of days during that short taxable year, 124 days, bears to 365. See § 1.382-4(c).

**Example 2. Consequence of no apportionment.** The facts are the same as in Example 1, except that L does not elect to apportion any portion of the consolidated section 382 limitation to L2. For its separate return years ending after August 29, 1992, L2's section 382 limitation with respect to the \$90 of the group's pre-change consolidated attribute apportioned to L2 is zero under paragraph (b)(2)(ii) of this section. Thus, the

\$90 consolidated net operating loss apportioned to L2 cannot offset L2's taxable income in any of its separate return years ending after August 29, 1992. For its consolidated return years ending after August 29, 1992, the L group's consolidated section 382 limitation with respect to the remaining \$110 of pre-change consolidated attribute is \$10, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment.

**Example 3. Apportionment of adjustment element.** The facts are the same as in Example 1, except that L2 ceases to be a member of the L group on August 29, 1993, and the L group has a \$4 carryforward of an unused consolidated section 382 limitation (under section 382(b)(2)) to the 1993 consolidated return year. The carryover of unused limitation increases the consolidated section 382 limitation for the 1993 consolidated return year from \$10 to \$14. L may elect to apportion all or any portion of the \$10 value element and all or any portion of the \$4 adjustment element to L2.

(d) **Rules pertaining to ceasing to be a member of a loss subgroup—(1) In**

*general.* A corporation ceases to be a member of a loss subgroup:

(i) On the first day of the first taxable year for which it files a separate return; or,

(ii) The first day that it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent (treating for this purpose the loss subgroup parent as the common parent described in section 1504(a)(1)(A)).

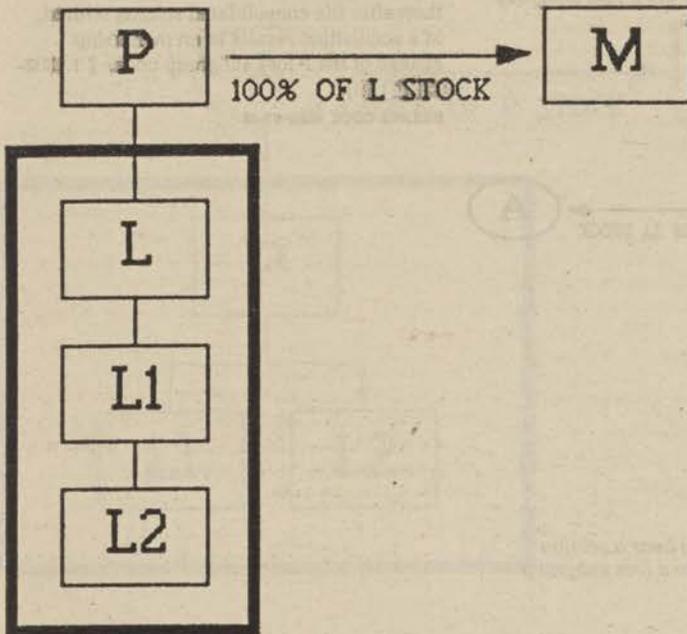
(2) **Examples.**

**Example 1. Basic case.** (a) P owns all the L stock, L owns all the L1 stock and L1 owns all the L2 stock. The P group has a consolidated net operating loss arising in 1992 that is carried over to 1993. On December 11, 1993, P sells all the stock of L to corporation M. Each of L, L1, and L2 is apportioned a portion of the 1992 consolidated net operating loss, and thereafter each joins with M in filing consolidated returns. Under § 1.1502-92, the L loss subgroup has an ownership change on December 11, 1993. The L loss subgroup has a subgroup section 382 limitation of \$100.

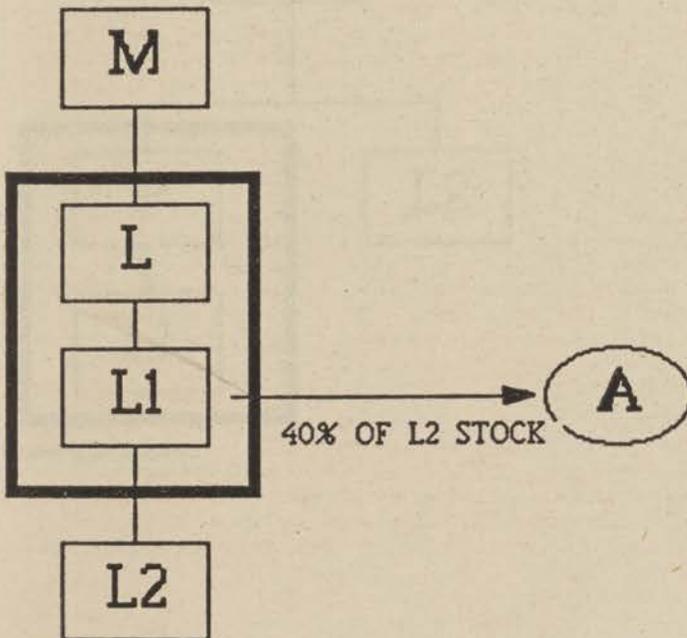
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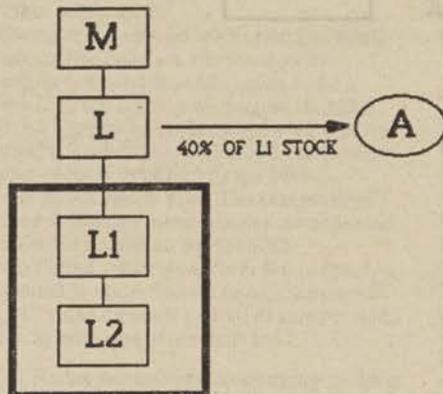
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(b) On May 22, 1994, L1 sells 40 percent of the L2 stock to A. L2 carries over a portion of the P group's net operating loss from 1992 to its separate return year ending December 31, 1994. Under paragraph (d)(1) of this section, L2 ceases to be a member of the L loss subgroup on May 22, 1994, which is both (1) the first day of the first taxable year for which it files a separate return and (2) the day it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent, L. The net operating loss of L2 that is carried over from the P group is treated as a pre-change loss of L2 for its separate return years ending after May 22, 1994. Under paragraphs (a)(2) and (b)(2) of this section, the separate section 382 limitation with respect to this loss is zero unless M elects to apportion all or a part of the subgroup section 382 limitation of the L loss subgroup to L2.

*Example 2. Formation of a new loss subgroup.* The facts are the same as in Example 1, except that A purchases 40 percent of the L1 stock from L rather than purchasing L2 stock from L1. L1 and L2 file a consolidated return for their first taxable year ending after May 22, 1994, and each of L1 and L2 carries over a part of the net operating loss of the P group that arose in 1992. Under paragraph (d)(1) of this section, L1 and L2 cease to be members of the L loss subgroup on May 22, 1994. The net operating

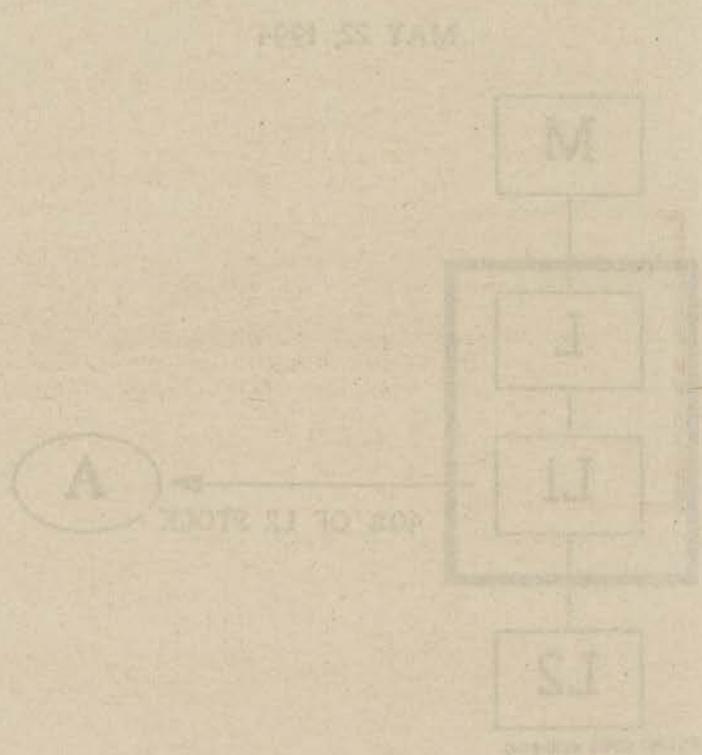
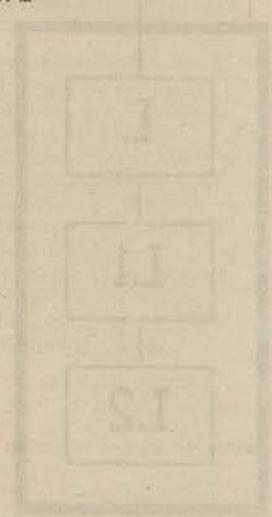
losses carried over from the P group are treated as pre-change subgroup attributes of the loss subgroup composed of L1 and L2. The subgroup section 382 limitation with respect to those losses is zero unless M elects to apportion all or part of the subgroup section 382 limitation of the L loss subgroup to the L1 loss subgroup.



*Example 3. Ceasing to bear a section 1504(a)(1) relationship to a loss subgroup*

*parent.* (a) A owns all the stock of P, and P owns all the stock of L1 and L2. The P group has a consolidated net operating loss arising in 1989 that is carried over to 1992 and 1993. Corporation M acquires all the stock of P on November 11, 1992, and P, L1, and L2 thereafter file consolidated returns with M. M's acquisition results in an ownership change of the P loss subgroup under § 1.1502-92(b)(1)(ii).

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(b) P distributes the L2 stock to M on October 7, 1993. L2 ceases to be a member of the P loss subgroup on October 7, 1993, the first day that it ceases to bear the relationship described in section 1504(a)(1) to P, the P loss subgroup parent. See paragraph (d)(1)(ii) of this section. Thus, the section 382 limitation with respect to the pre-change subgroup attributes attributable to L2 is zero except to the extent M elects to apportion all or a part of the subgroup section 382 limitation of the P loss subgroup to L2.

*Example 4. Relationship through a successor.* The facts are the same as in Example 3, except that, instead of P's distributing the stock of L2, L2 merges into L1 on October 7, 1993. L1 (as successor to L2 in the merger within the meaning of § 1.382-2T(f)(4)) continues to bear a relationship described in section 1504(a)(1) to P, the loss subgroup parent. Thus, L2 does not cease to be a member of the P loss subgroup as a result of the merger.

(e) *Filing the election to apportion—*

(1) *Form of the election to apportion.* The election under paragraph (c) of this section must be in the form of the following statement: "THIS IS AN ELECTION UNDER § 1.1502-95 OF THE INCOME TAX REGULATIONS TO APPORTION ALL OR PART OF THE [insert either CONSOLIDATED SECTION 382 LIMITATION or SUBGROUP SECTION 382 LIMITATION] TO [insert name and E.I.N. of the corporation (or the corporations that compose a new loss subgroup) to which allocation is made]. The declaration must also include the following information:

(i) The day of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation);

(ii) The amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the taxable year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section to a corporation that ceases to be a member during the year);

(iii) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section; and

(iv) The name and E.I.N. of the common parent making the apportionment.

The declaration must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent of the group including the loss subgroup parent) by persons authorized to sign their respective income tax returns.

(2) *Filing of the election.* The statement must be filed by the common parent of the group that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member. The common parent must also deliver a copy of the statement to the former member (or the members of the new loss subgroup) on or before the day the group files its income tax return for the consolidated return year that the former member (or new loss subgroup) ceases to be a member. A copy of the statement must be attached to the first return of the former member (or the first return in which the members of a new loss subgroup join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(3) *Revocation of election.* An election made under paragraph (c) of this section is revocable only with the consent of the Commissioner.

#### § 1.1502-96 Miscellaneous rules.

(a) *End of separate tracking of losses of a 5-year member—(1) Application.* This paragraph (a) applies to a member (or a loss subgroup) with a net operating loss carryover arose (or is treated under § 1.1502-21(c) as arising) in a SRLY (or a net unrealized built-in gain or loss determined at the time that the member (or loss subgroup) becomes a members of the consolidated group if there is:

(i) An ownership change of the member (or loss subgroup) in connection with, or after, becoming a member of the group; or

(ii) A period of 5 consecutive years following the day that the member (or loss subgroup) becomes a member of a group during which the member (or loss subgroup) has not had an ownership change.

(2) *Gains and losses not separately tracked.* If this paragraph (a) applies to a member (or loss subgroup), then, following the earlier of the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the group) or the last day of the 5 consecutive year period described in paragraph (a)(1) of this section, a net operating loss carryover of the member (or loss subgroup) that arose (or is treated as if it were described in § 1.1502-91(c)(1)(i) (and the group's net unrealized built-in gain or loss is determined under § 1.1502-91(g) by taking into account the separately computed net unrealized built-in gain or loss of the member (or members of the

loss subgroup). The preceding sentence applies for purposes of determining whether there is an ownership change with respect to such attributes following such change date (or earlier day) or 5 consecutive year period. For example, on any day after the change date or the end of the 5 consecutive year period:

(i) The member's (or loss subgroup's) separately computed net unrealized built-in gain or loss is taken into account in determining—

(A) Whether the group has a net unrealized built-in loss (and is therefore a loss group), and

(B) The loss group's testing period under § 1.382-2T(d)(3);

(ii) There is an ownership change with respect to such attributes only if the group is a loss group and has an ownership change; and

(iii) If the group has an ownership change, such attributes are pre-change consolidated attributes subject to the loss group's consolidated section 382 limitation.

(3) *Special rule for testing period.* For purposes of determining the beginning of the testing period for a loss group, the member's (or loss subgroup's) net operating loss carryovers (or net unrealized built-in gain or loss) described in paragraph (a)(2) of this section are considered to arise:

(i) in a case described in paragraph (a)(1)(i) of this section, in a taxable year that begins not earlier than the later of the day following the change date or the day that the member becomes a member of the group; and

(ii) in a case described in paragraph (a)(1)(ii) of this section, in a taxable year that begins 3 years before the end of the 5 consecutive year period.

(4) *Limits on application.* The rule contained in this paragraph (a) applies solely for purposes of §§ 1.1502-91 through 1.1502-96 (other than § 1.1502-96(b)(4)(ii)(B) (relating to the definition of pre-change attributes of a subsidiary)) and § 1.1502-98, and not for purposes of other provisions of the consolidated return regulations, including, for example, §§ 1.1502-15 and 1.1502-21 (relating to the consolidated net operating loss deduction). See also paragraph (c) of this section for the continuing effect of an ownership change with respect to pre-change attributes.

(b) *Ownership change of subsidiary—(1) Ownership change of a subsidiary because of options or plan or arrangement.* Notwithstanding § 1.1502-92, a subsidiary has an ownership change for purposes of section 382 with respect to attributes described in § 1.1502-91(c)(1) (relating to the

definition of loss group) or § 1.1502-91(d) (relating to the definition of loss subgroup) if it has an ownership change under the principles of § 1.1502-95(b) and section 382(g) and § 1.382-2T in the event of:

(i) The deemed exercise under § 1.382-2T(h)(4) of an option or options (other than an option with respect to stock of the common parent) held by a person (or persons acting pursuant to a plan or arrangement) to acquire more than 20 percent of the stock of the subsidiary; or

(ii) An increase by 1 or more 5-percent shareholders, acting pursuant to a plan or arrangement to avoid an ownership change of a subsidiary, in their percentage ownership interest in the subsidiary by more than 50 percentage points during the testing period of the subsidiary through the acquisition (or deemed acquisition pursuant to § 1.382-2T(h)(4)) of ownership interests in the subsidiary and in higher-tier members with respect to the subsidiary.

For purposes of this paragraph (b), the ownership change is determined on a separate entity basis by treating the subsidiary as not being a member of a consolidated group.

(2) *Special rule for contracts to purchase stock.* Paragraph (b)(1)(i) of

this section does not apply with respect to an option created by a bilateral contract to purchase stock of a subsidiary that would otherwise have been deemed exercised under § 1.382-2T(h)(4)(i) on a particular day if the stock is actually acquired pursuant to the contract within 1 year of that day.

(3) *Examples.*

*Example 1. Ownership change of a subsidiary because of an option.* (a) L owns all the L1 stock and L1 owns all the L2 stock. The L group has a consolidated net operating loss arising in 1991 that is carried over to 1992 and 1993. A portion of the consolidated net operating loss is attributable to L1 and L2. On August 26, 1992, corporation M enters into a bilateral contract to purchase all the L1 stock from L for cash. L actually sells the L1 stock to M pursuant to the contract on November 22, 1993. L1 and L2 thereafter join with M in filing a consolidated return.

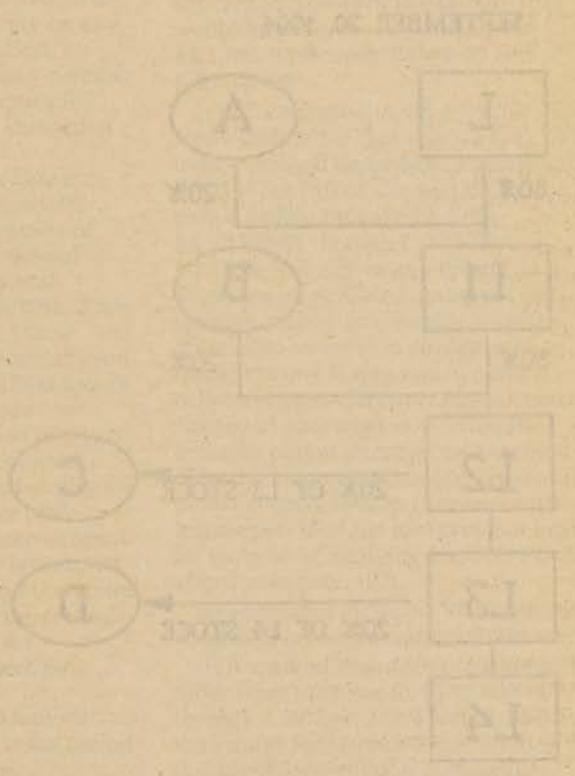
(b) Under paragraph (b)(1) of this section, treating L1 and L2 as though they were separate corporations, each corporation has an ownership change under section 382(g) and 1.382-2T on August 26, 1992, because of the deemed exercise of M's contract to purchase the L1 stock. Paragraph (b)(2) of this section does not apply because the stock is not acquired within 1 year of the day that the contract was entered into.

*Example 2. Purchase contract disregarded in ownership change determination.* The facts are the same as in Example 1, except

that L actually sells the L1 stock to M pursuant to the contract on November 22, 1992. Under paragraph (b)(2) of this section, the deemed exercise rule of § 1.382-2T(h)(4)(i) does not apply to the contract to cause an ownership change on August 26, 1992, because the stock was actually acquired pursuant to the contract within 1 year of that day. The acquisition of the stock pursuant to the contract on November 22, 1992, causes an ownership change of the loss subgroup composed of L1 and L2 on that day under § 1.1502-92(b)(1)(ii).

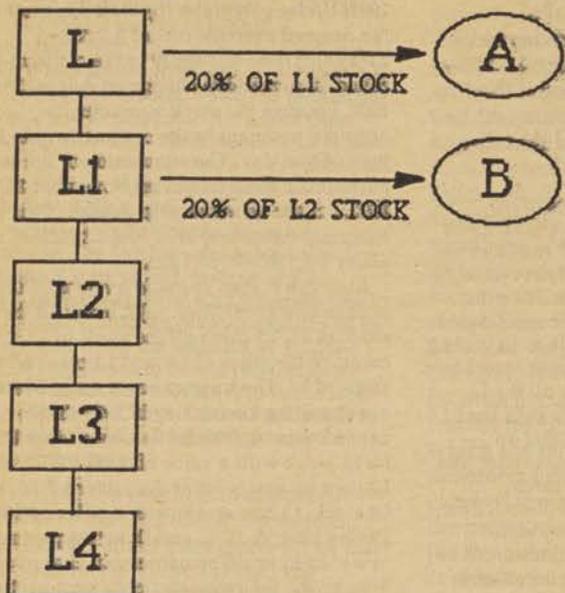
*Example 3. Plan to avoid an ownership change of a subsidiary.* (a) L owns all the stock of L1, L1 owns all the stock of L2, L2 owns all the stock of L3, and L3 owns all the stock of L4. The L group has a consolidated net operating loss arising in 1993 that is carried over to 1994. L has assets other than its L1 stock with a value of \$900. L1, L2, and L3 own no assets other than their L2, L3, and L4 stock. L4 has assets with a value of \$100. During 1994, A, B, C, and D, acting pursuant to a plan to avoid an ownership change of L4, acquire the following ownership interests in the members of the L loss group: (A) on September 11, 1994, A acquires 20 percent of the L1 stock from L and B acquires 20 percent of the L2 stock from L1; and (B) on September 20, 1994, C acquires 20 percent of the stock of L3 from L2 and D acquires 20 percent of the stock of L4 from L3.

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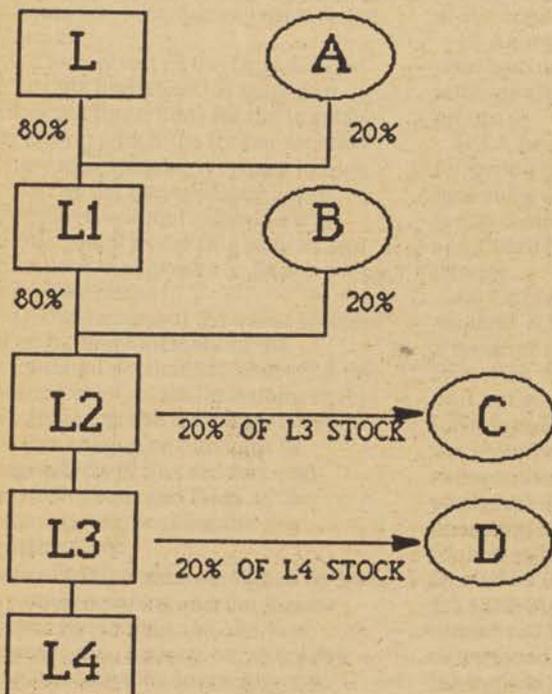


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(b) The acquisitions by A, B, C, and D pursuant to the plan have increased their respective percentage ownership interests in L4 by approximately 10, 13, 16, and 20 percentage points, for a total of approximately 59 percentage points during the testing period. This more than 50 percentage point increase in the percentage ownership interest in L4 causes an ownership change of L4 under paragraph (b)(2) of this section.

(4) *Effect of the ownership change*—(i) *In general.* If a subsidiary has an ownership change under paragraph (b)(1) of this section, the amount of taxable income for any post-change year that may be offset by the pre-change losses of the subsidiary shall not exceed the section 382 limitation for the subsidiary. For purposes of this limitation, the value of the subsidiary is determined solely by reference to the value of the subsidiary's stock.

(ii) *Pre-change losses.* The pre-change losses of a subsidiary are:

(A) Its allocable part of any consolidated net operating loss which is attributable to it under § 1.1502-21(b) (determined on the last day of the consolidated return year that includes the change date) that is not carried back and absorbed in a taxable year prior to the year including the change date;

(B) Its net operating loss carryovers that arose (or are treated under § 1.1502-21(c) as having arisen) in a SRLY; and

(C) Its recognized built-in loss with respect to its separately computed net unrealized built-in loss, if any, determined on the change date.

(5) *Coordination with §§ 1.1502-91, 1.1502-92, and 1.1502-94.* If an increase in percentage ownership interest causes an ownership change with respect to an attribute under this paragraph (b) and under § 1.1502-92 on the same day, the ownership change is considered to occur only under § 1.1502-92 and not under this paragraph (b). See § 1.1502-94 for anti-duplication rules relating to value.

(c) *Continuing effect of an ownership change.* A loss corporation (or loss subgroup) that is subject to a limitation under section 382 with respect to its pre-change losses continues to be subject to the limitation regardless of whether it becomes a member or ceases to be a member of a consolidated group. Under section 382, an ownership change that occurs after an earlier ownership change may result in an additional, lesser (but never in a greater) section 382 limitation with respect to those losses.

#### § 1.1502-97 [Reserved]

#### § 1.1502-98 Coordination with section 383.

The rules contained in §§ 1.1502-91 through 1.1502-96 also apply for purposes of section 383, with appropriate adjustments to take into account that section 383 applies to credits and net capital losses. Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, the principles of § 1.383-1T must be taken into account in applying §§ 1.1502-91 through 1.1502-96. For example, if a loss group has an ownership change under § 1.1502-92 and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of § 1.382-1T(c)(6) and § 1.1502-93 (relating to the computation of the consolidated section 382 limitation).

#### § 1.1502-99 Effective dates.

(a) *Effective date*—(1) *In general.* Sections 1.1502-91 through 1.1502-96 and § 1.1502-98 are effective March 6, 1991, and apply to any testing date on or after January 29, 1991. Sections 1.1502-94 through 1.1502-96 also apply on any date on or after January 29, 1991, on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup).

(2) *Testing period may include a period beginning before January 29, 1991.* A testing period of purposes of §§ 1.1502-91 through 1.1502-96 and § 1.1502-98 may include a period beginning before January 29, 1991. Thus, for example, in applying § 1.1502-92(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after January 29, 1991 must take into account the period beginning before January 29, 1991, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502-92(b)(1).

(b) *Transition rules*—(1) *Methods permitted*—(i) *In general.* For the period ending on January 28, 1991, a consolidated group is permitted to use

any method described in paragraph (b)(2) of this section which is consistently applied to determine if an ownership change occurred with the respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SYLYs), or a net unrealized built-in loss. If an ownership change occurred during that period, the group is also permitted to use any method described in paragraph (b)(2) of this section which is consistently applied to compute the amount of the section 382 limitation that applies to limit the use of taxable income in any post-change year ending before, on, or after January 29, 1991. The preceding sentence does not preclude the imposition of an additional, lesser limitation due to a subsequent ownership change nor, except as provided in paragraph (b)(1)(iii) of this section, does it permit the beginning of a new testing period for the loss group.

(ii) *Recapture of excess limitation.* If an ownership change occurred during the period ending on January 28, 1991, and a method described in paragraph (b)(2) of this section was not used for a post-change year, the members (or group) must reduce the section 382 limitation for post-change years for which an income tax return is filed after February 28, 1991, to recapture, as quickly as possible, any section 382 limitation that members took into account in excess of the amount that would have been allowable under §§ 1.1502-91 through 1.1502-96 and § 1.1502-98.

(iii) *Coordination with effective date.* Notwithstanding that a group may have used a method described in paragraphs (b)(2) (ii) or (iii) of this section for the period before January 29, 1991, §§ 1.1502-91 through 1.1502-96 and § 1.1502-98 apply to any testing date occurring on or after January 29, 1991, for purposes of determining whether there is an ownership change with respect to any losses and, if so, the collateral consequences. Any ownership change of a member other than the common parent pursuant to a method described in paragraphs (b)(2) (ii) or (iii) of this section does not cause a new testing period of the loss group to begin for purpose of applying § 1.1502-92 on or after January 29, 1991.

(2) *Permitted methods.* The methods described in this paragraph (b)(2) are:

(i) A method that does not materially differ from the rules in §§ 1.1502-91 through 1.1502-96 and § 1.1502-98 (other than those in § 1.1502-95(c) (relating to the apportionment of a section 382 limitation) as they would apply to a

corporation that ceases to be a member of the group before January 29, 1991;

(ii) A reasonable application of the rules in section 382 and the regulations thereunder applied to each member on a separate entity basis, treating each member's allocable part of a consolidated net operating loss which is attributable to it under § 1.1502-21(b) as a net operating loss of that member and applying rules similar to § 1.382-5 to avoid duplication of value in computing the section 382 limitation for the member (see § 1.382-5(h) (relating to the effective date and transition rules regarding controlled groups)); or

(iii) A method approved by the Commissioner upon application by the common parent.

Thus, for example, a section 382 limitation that takes into account the entire value of the group is not permitted with respect to a subsidiary if the ownership change determination was based on the method described in paragraph (b)(2)(ii) of this section; however, the value of the entire group may be taken into account if the determination whether an ownership change occurred was consistently made under a method that does not materially differ from § 1.1502-92.

(c) *Amended returns.* A group may file an amended return in connection with an ownership change occurring before January 29, 1991 to modify the amount of a section 382 limitation with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a recognized built-in loss (or gain) only if it files amended returns:

(1) For the earliest taxable year ending after December 31, 1986, in which it had an ownership change, if any, under § 1.1502-92;

(2) For all subsequent taxable years for which returns have already been filed as of the date of the amended return; and

(3) The modification with respect to all members for all taxable years ending in 1987 and thereafter complies with §§ 1.1502-91 through 1.1502-98.

Amended returns will only be permitted under this paragraph (c) if an amended return for the taxable year described in paragraph (c)(1) of this section is filed before [INSERT THE DATE THAT IS 6 MONTHS AFTER THE TREASURY DECISION ADOPTING THIS NOTICE OF PROPOSED RULEMAKING IS FILED WITH THE FEDERAL REGISTER].

(d) *Section 383.* This section also applies for the purpose of section 383, with appropriate adjustments to take

into account that section 383 applies to credits and net capital losses.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-2175 Filed 1-29-91; 11:31 am]

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## 26 CFR Part 1

[CO-78-90]

RIN 1545-AP15

### Consolidated Returns—Limitations on the Use of Certain Losses, Deductions and Credits

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice of proposed rulemaking and withdrawal of previous proposed rules.

**SUMMARY:** This document proposes to amend the consolidated return regulations relating to deductions and losses of members. The method of computing the limitation with respect to separate return limitation year losses is amended. The amended limitation is based on the member's cumulative contribution to the group's consolidated taxable income and, where appropriate, is applied to subgroups rather than separately to the members of the subgroup. The rules relating to carryover and carryback of losses to consolidated and separate return years are amended and restated. Amendments are also made to the built-in deduction rules based on the built-in loss rules of section 382(h). The existing consolidated return change of ownership rules are made applicable only to changes occurring before January 29, 1991.

**DATES:** Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for April 8, 1991, at 10 a.m. must be received by March 29, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

**ADDRESSES:** Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, Attention CC:CORP:T:R (CO-78-90), Room 4429, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** David P. Madden at (202) 566-3205 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### A. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the

Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in § 1.1502-21(b)(3)(i). This information is required by the Internal Revenue Service to assure that section 172(b)(3) and the regulations thereunder are properly applied to consolidated groups. This information will be used to determine that the proper amount of tax is reported by members of consolidated groups and whether, and to what extent, the members' returns should be audited. The respondents will be members of consolidated groups.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

*Estimated total annual reporting burden:* 1000 hours.

*Estimated burden per respondent:* varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes.

*Estimated number of respondents:* 6000.

*Estimated frequency of responses:* annually.

##### B. General Rules Relating to SREY

Sections 1.1502-15, 1.1502-21, 1.1502-22, 1.1502-23, and 1.1502-79 of the present regulations provide the basic rules to determine the consolidated net operating losses and consolidated net capital losses of a group. Unless otherwise noted, the discussion in this section of the preamble relating to consolidated net operating losses applies equally to consolidated net capital losses and built-in amounts.

In general, consolidated taxable income is computed by offsetting the income and losses of members of consolidated groups. If an acquired corporation joins the acquiring corporation in the filing of consolidated returns, however, use of the acquired corporation's pre-acquisition losses to offset income generated by other members of the group is limited by the

"separate return limitation year" (SRLY) rules. Although a consolidated group's acquisition of a new member often results in the application of section 382 to the losses carried from the new member's SRLYs to the group's consolidated return years, the section 382 rules do not always apply (or, if applicable, do not always significantly restrict the group's use of the losses). See H.R. Conf. Rept. No. 841, 99th Cong., 2d Sess. II-194 (1986). In connection with the issuance of proposed regulations applying section 382 to consolidated groups, this document proposes rules that coordinate the SRLY rules with the proposed section 382 rules and that otherwise modify the SRLY rules to improve their operation.

The present SRLY limitation is based on the new member's contribution to consolidated taxable income. The new member's built-in deductions (§ 1.1502-15), net operating loss carryovers and carrybacks (§ 1.1502-21(c)), and net capital loss carryovers and carrybacks (§ 1.1502-22(c)) may all be limited under the SRLY rules. To the extent that more than one of these items is subject to the SRLY limitation in the same year, the consolidated return rules reflect the general principles of sections 172 and 1212 regarding the order in which the items are allowed. See section "C" of the preamble for further discussion regarding the principles of sections 172 and 1212.

#### 1. Contribution to Consolidated Taxable Income

Under the present regulations, the SRLY limitation is determined separately for each member and for each year. The SRLY limitation is based on the member's contribution to consolidated taxable income for the year, with the contribution being determined by measuring the difference between the group's income with and without the member's items of income and deduction.

This approach produces certain anomalous results. If the member produces income in a consolidated return year, but the group has no positive consolidated taxable income for that year (e.g., because losses of other members offset the income), the member's SRLY losses cannot be absorbed in that year. Because the amount of the member's contribution in one year is not carried over to later years, the SRLY losses cannot be absorbed in a later consolidated return year unless the member contributes to consolidated taxable income again in that year. Another anomaly exists because a member with SRLY losses is not treated as contributing to

consolidated taxable income if the contribution consists of capital gains in a year in which the rest of the group has offsetting capital losses.

The proposed SRLY rules retain the concept of limiting a member's SRLY losses based on the member's contribution to consolidated taxable income. However, the member's contribution to consolidated taxable income is measured cumulatively over the entire period during which the corporation is a member of the group. Therefore, a member's SRLY losses may be absorbed in a consolidated return year in which the member does not contribute to consolidated taxable income to the extent of the member's cumulative net contribution to consolidated taxable income in prior consolidated return years of the group. However, a member's SRLY losses may not be absorbed in a consolidated return year in which the member contributes to consolidated taxable income to the extent the member's contribution does not exceed its cumulative consolidated net operating loss (if any) sustained in prior consolidated return years of the group.

Using a cumulative measurement of a member's contribution to consolidated taxable income also permits better coordination with the application of the section 382 limitation to net operating loss carryovers, as revised by the Tax Reform Act of 1986 and as applied to consolidated groups by proposed §§ 1.1502-90 through 1.1502-99, than would be permitted under the present rules. Under the present rules, if a member's contribution to consolidated taxable income in a particular year is sufficient to absorb a loss carryover from a SRLY, but the loss cannot be absorbed because of a limitation under section 382, the excess contribution cannot be taken into account for purposes of applying the SRLY limitation in subsequent years. The cumulative measurement approach allows any excess contribution in one year to be taken into account in a subsequent year for purposes of the SRLY limitation.

Under the proposed SRLY rules, the aggregate amount of a member's SRLY losses absorbed by the group as of the end of any consolidated return year may not exceed the member's aggregate contribution to the group's consolidated taxable income as of the end of the year. The member's contribution to consolidated taxable income is determined by taking into account only the member's items of income, gain, deduction, and loss, instead of by comparing consolidated taxable income

with and without the member's items. In making this determination, a member's built-in deductions are taken into account in the year recognized only if they are allowed after application of the SRLY limitation. (See section "D" of the preamble for further discussion.) The new formulation of the SRLY limitation continues to refer to the computation of consolidated taxable income so that the member's contribution is determined, for example, by applying such rules as the deferred intercompany transaction rules of § 1.1502-13 and the rules providing for elimination of intercompany dividends under § 1.1502-14.

In order to prevent one member's inappropriate use of the historic contribution to consolidated taxable income by another member, predecessors will be taken into account only as the context may require. In addition, a SRLY limitation may not be increased by a member transferring a portion of its assets in order to divide its contribution to consolidated taxable income between itself and other members of the group.

#### 2. Limited Application of Fragmentation

Under the present regulations, the SRLY limitation operates on a member-by-member basis. Assume, for example, that two members of the same group join another group, and one carries over a portion of its net operating losses arising in the old group. Although the carryovers could have been absorbed in the old group by the income of both members, the new group generally may absorb the carryovers only to the extent that the member carrying over the loss contributes to the new group's consolidated taxable income. This member-by-member approach is referred to as "fragmentation."

Fragmentation is in many ways inconsistent with the single entity approach to the use of losses under the consolidated return regulations. The single entity approach reduces the tax distinctions between separate affiliated corporations and separate divisions within a single corporation, and reflects two principles. First, corporations that file a consolidated return should be able to use each other's losses as if they were divisions of a single corporation rather than separate corporations. Second, the tax laws should be neutral with respect to changes in ownership so that losses arising among members of a group are able to be used among the members following an ownership change, subject only to the restrictions imposed on a single entity in similar circumstances.

In order to better implement these principles, the proposed rules eliminate

fragmentation in certain cases and apply the SRLY limitation on a subgroup basis rather than separately to the members of the subgroup. The subgroup approach adopted by the proposed rules is more complex than fragmentation. As a result, fragmentation is retained where adoption of a subgroup approach would impose burdensome administrative requirements. For example, fragmentation is retained with respect to certain built-in losses because composing subgroups based on the members of the group in the year in which a built-in loss accrues would require taxpayers to identify when economic losses accrue with respect to each asset. Comments are requested as to whether the benefits afforded by the subgroup approach justify the additional burdens imposed, and whether fragmentation should therefore be retained.

The proposed rules provide that, in the case of SRLY subgroups, the SRLY limitation is based on the aggregate contribution to consolidated taxable income by the members included in a SRLY subgroup, rather than on contributions on a member-by-member basis. Thus, the SRLY limitation is based on aggregate amounts for the members of the SRLY subgroup.

A SRLY subgroup is identified by reference to each SRLY loss, and a separate SRLY subgroup is determined for each carryover and carryback. A SRLY subgroup may exist only with respect to carryovers or carrybacks arising in a consolidated return year of another group that is not treated as a SRLY with respect to the other group. With respect to both carryovers and carrybacks, the SRLY subgroup members must be continuously affiliated with each other during the period from their affiliation in the group in which the loss arose until the beginning of the year to which the loss is carried.

Continuous affiliation is required in order to preserve the SRLY limitation. Once a member leaves a group, its inclusion in the single entity has ended. If it later rejoins the group, its subsequent income is not distinguished from the income of any other new member. Once a group becomes a subgroup within another group, it is generally not permitted to increase its membership. Permitting increases in the membership of subgroups would effectively eliminate the SRLY limitation.

Additional rules are provided for determining SRLY subgroups with respect to recognized built-in losses (whether or not the recognized losses are carried from another group). Consistent with the rules for built-in

losses in proposed § 1.1502-15, the SRLY subgroup members must also have been continuously affiliated with the member recognizing the built-in loss during the 60 consecutive month period ending immediately before becoming members of the group in which the loss is recognized and until the beginning of the year in which the loss is recognized. (See section "D" of the preamble for further discussion.) These rules are necessary because the members of the group in which the loss is recognized may also be subject to a SRLY limitation with respect to the losses. Recognized built-in losses are treated as separate carryovers or carrybacks for purposes of determining the extent to which they are limited by the SRLY rules (and as such are subject to the continuing affiliation requirements under the subgroup rules relating to carryovers and carrybacks).

Because a separate SRLY subgroup is identified with respect to each SRLY loss, members may be included in more than one SRLY subgroup if more than one loss is carried from another group. Consequently, anti-duplication rules are provided in order to prevent each dollar of contribution to consolidated taxable income from being used to allow more than one dollar of SRLY loss to be absorbed by a group. The rules generally permit losses to be absorbed in the order in which they arise to reduce the likelihood that losses will expire under the principles of section 172.

The SRLY subgroup rules may increase the absorption of SRLY losses by some groups as compared to the amount allowed by the current regulations, but decrease the absorption in other cases. Consistent with the principles underlying the SRLY subgroup rules, the rules are mandatory and anti-abuse rules are provided in order to prevent members from being inappropriately included in, or excluded from, a SRLY subgroup. Members excluded with a principal purpose of avoiding the application of, or increasing any limitation under, the SRLY limitation are included in the SRLY subgroup. Members included with such a principal purpose cause all the members of the SRLY subgroup to be subject to fragmentation. However, taxpayers cannot elect fragmentation by including a member, because such an inclusion will not be considered to have been made with the requisite purpose.

Additional rules are provided to coordinate the SRLY subgroup rules with other provisions of the Code and regulations to prevent the subgroup principles from overriding the principles of the other provisions.

### C. Rules relating to carryovers and carrybacks

Sections 1.1502-15, 1.1502-21, 1.1502-22, 1.1502-23 and 1.1502-79 of the present regulations also provide rules to determine the carryover and carryback of consolidated net operating losses and consolidated net capital losses of a group. Unless otherwise noted, the discussion in this section of the preamble relating to consolidated net operating losses applies equally to consolidated net capital losses and built-in amounts.

The present consolidated return rules reflect the general principles of sections 172 and 1212 regarding the order in which items of loss and deduction are allowed. For example, any consolidated net operating loss carried to a year generally is allowed only after any deductions arising in the year and after any capital loss arising in or carried to the year. The proposed amendments preserve these relationships while restating the rules of §§ 1.1502-21 (a) and (b) and 1.1502.79 and relocating the rules in § 1.1502-21 (a) and (b). Section 1.1502-21 is redesignated "Net operating losses" to signify that all of the basic operating rules are contained in one section, instead of only those rules applicable to the consolidated net operating loss deduction. Except as described below, these amendments to the rules relating to carryovers and carrybacks are generally intended to simplify, but not change, the rules of present law.

Proposed consolidated return regulations were published on July 31, 1984 (49 FR 30528). Certain provisions from the prior proposed regulations have been modified and are included in these proposed regulations. The corresponding provisions of the prior proposed regulations are withdrawn, and the remaining provisions of the prior proposed regulations that have not been withdrawn are not affected.

Losses arising in consolidated groups that may be carried to separate return years of members may not be carried to equivalent years of the group. Under the proposed amendments, the determination of equivalent years is based on the numerical relationship of years regardless of their length. Section 381 transactions between members of a group will not result in a short year for the non-surviving member for purposes of the loss carryover rules; no distinction is made for this purpose between losses that are or are not subject to limitation under § 1.1502-21 (c) or (d). The election to relinquish the entire carryback period with respect to a

consolidated net operating loss for the taxable year must be made by the group and is binding on all its members.

An "offspring rule" in § 1.1502-79(a)(2) of the present regulations permits the consolidated net operating loss attributable to a newly formed member to be carried back to certain consolidated and separate return years of other members even though the newly formed member was not in existence in the prior year; the rule does not, however, clearly identify the separate return year to which the loss may be carried back. The regulations proposed in 1984 sought to identify the appropriate member with respect to which a newly formed member is an offspring. Under the new proposed rule, a loss of a newly formed member may not be carried back to separate return years of a member other than a qualifying common parent. A qualifying common parent is one that was not a member of a different consolidated group or an affiliated group filing separate returns for the carryback year or any subsequent year in the 3 year carryback period. The effect of this rule is to treat the common parent as the consolidated group for years during which it was unaffiliated if it began filing consolidated returns as soon as it formed or acquired subsidiaries.

The proposed amendments eliminate the rules for special status losses (e.g., foreign expropriation losses) because, to the extent the group's loss is attributable to a special status loss, applicable carryover and carryback rules are generally provided in the Code and elsewhere in the regulations. Any rules not so provided may be addressed in published or private rulings. Comments are requested as to the need for specific provisions in the consolidated return regulations regarding absorption and carryovers and carrybacks of these special status losses. Consistent with § 1.1502-80, the amendments also clarify that the rules for carryover and carryback of losses must take into account all provisions of the Code and regulations.

#### D. Built-in losses

Section 1.1502-15 of the present regulations provides rules limiting deductions if the deductions economically accrued in SRLY's but are recognized in consolidated return years. Generally, these deductions are treated as the economic equivalent of loss carryovers and are subject to the SRLY limitations applicable to loss carryovers if they are recognized during a 10-year recognition period following the group's acquisition of the assets that produced the deduction. The rule does not apply

to acquisitions if the built-in deductions represent no more than 15 percent of value (based on specified assets and valuation methods).

Section 382(h) provides similar rules regarding built-in losses that are attributable to the period before an ownership change and are recognized during a 5-year recognition period following the ownership change. Because a group's acquisition of assets often results in the application of both sets of rules, proposed § 1.1502-15 conforms certain aspects of the definition of built-in deductions to the rules provided under section 382(h) and redesignates "built-in deductions" as "built-in losses."

The proposed built-in loss rules apply to a new member that has a net unrealized built-in loss under section 382(h)(3) (as modified by the proposed rules) when it becomes a member, determined as if the member had an ownership change at that time. Deductions are treated as subject to the SRLY limitation to the extent they would be treated as recognized built-in losses under section 382(h)(2)(B) (as modified by the proposed rules) during the 5 year recognition period after the member joins the group. Thus, the proposed rules generally adopt the built-in loss rules of section 382, including the threshold requirements of section 382(h), rather than those of the present regulations for purposes of determining the existence of a built-in loss. However, the section 382 built-in loss rules are modified in certain respects to make them consistent with the objectives of the SRLY rules. For example, the restrictions under section 382(h)(1)(B)(ii), which limit the amount of net unrealized built-in loss, do not apply for purposes of the SRLY built-in loss rules.

The proposed regulations adopt a subgroup principle that is generally consistent with the SRLY subgroup rules described above and the rules of proposed § 1.1502-91(d) (relating to subgroups for purposes of section 382). For purposes of the built-in loss rules, a subgroup is composed only of those members that have been continuously affiliated with each other during the 60 month period ending on the date they become members of the group in which the loss is recognized.

Requiring 60 months of continuous affiliation avoids the administrative complexity of identifying where built-in losses have economically accrued, and provides a transition from separate return to consolidated return status as it becomes more appropriate to view a group's investment in a new member as an investment in its assets and

operations rather than in its stock. (A similar principle is reflected in proposed § 1.1502-20(c) (relating to disallowance of stock loss).) The 60 month period was adopted to conform with the recognition period under section 382(h)(7), and represents the period after which section 382, if applicable, would no longer separately identify built-in amounts.

The 60 month period is tested only at the time that corporations become members of a group. Consequently, corporations cannot compose a subgroup within a group by reason of their additional continuous affiliation within that group. However, the corporations may compose a subgroup in a subsequent group if the additional period of affiliation causes them to satisfy the 60 month requirement on later becoming members of that subsequent group.

Proposed § 1.1502-15 also restates the basic operating rules for applying the SRLY limitation under §§ 1.1502-21(c) and 1.1502-22(c) to built-in losses, but it generally retains the principles of present law. A built-in loss is treated as a loss carryover arising in a SRLY for purposes of determining the amount of, and the extent to which it is limited by, the SRLY limitation in the year the loss is recognized. In order for the SRLY limitation to be determined on a subgroup basis, the members of a SRLY subgroup with respect to the loss must remain affiliated until the year of absorption. This treatment as a loss carryover does not require that the loss in fact be carried over or aggregated with other loss carryovers to the year. For example, a built-in loss is absorbed (to the extent permitted under the SRLY limitation) in the year it is recognized before any loss of the same character carried to that year. (Built-in losses that are allowed in the year recognized after application of the SRLY limitation are, like any other current deductions or losses of the member, taken into account in computing the member's contribution to consolidated taxable income for purposes of determining the SRLY limitation with respect to any net operating loss carryovers or carrybacks.)

If the built-in loss is not allowable by reason of a SRLY limitation, the loss is treated as a separate loss of the group that remains subject to the SRLY limitation and that may be carried over or back to consolidated or separate return years under the principles of proposed § 1.1502-21(b). If the loss is not allowable by reason of a limitation other than the SRLY limitation, the loss may remain subject to the SRLY limitation

depending on whether the other limitation applies before or after the SRLY limitation applies. For example, if the loss is not allowed because a section 382 limitation also applies, the loss remains subject to the SRLY limitation in any subsequent year to which it is carried. If the loss is allowed under the SRLY limitation and other limitations, but the group has insufficient income to offset the loss, the loss contributes to the group's consolidated net operating loss for the year of recognition and is carried over or back to consolidated or separate return years under the principles of section 172 and proposed § 1.1502-21(b) but is no longer subject to the SRLY limitation.

#### E. Repeal of consolidated return change of ownership and old section 382 limitations

Section 1.1502-21(d) currently limits the use of net operating loss carryovers to a consolidated return year following a consolidated return change of ownership (CRCO). The CRCO rules generally parallel the ownership change rules of section 382 before its amendment by the Tax Reform Act of 1986 (old section 382), and limit loss carryovers from years ending before the ownership change. Similar rules apply under § 1.1502-22(d).

Section 1502-21(e) currently applies the rules of old section 382 to consolidated groups.

The policies underlying the CRCO rules have been subsumed by the single entity approach to the application of section 382 to consolidated groups (see proposed §§ 1.1502-90 through 1.1502-99), and old section 382 has been repealed by the Tax Reform Act of 1986. Consequently, the proposed regulations replace the CRCO rules with the section 382 rules in proposed §§ 1.1502-90 through 1.1502-99. In addition, § 1.1502-21(e) continues to apply only with respect to ownership changes governed by old section 382.

#### F. Other provisions

The rules of § 1.1502-23, applicable to consolidated net section 1231 gain or loss, have been restated to conform to the current rules of the Code. Comments are requested on the problems presented by application of the recapture rules under section 1231(c), such as the application of the rules when a net section 1231 gain is recognized within 5 years of a subsidiary joining or leaving a group.

Amendments consistent with those proposed for §§ 1.1502-21, 1.1502-22, and 1.1502-79 are not proposed in this document for the consolidated investment credit (§ 1.1502-3) the

consolidated foreign tax credit (§ 1.1502-4), and the application of overall foreign loss recapture rules (§ 1.1502-9). The proposed regulations published on July 31, 1984 would amend some aspects of these rules. Consideration is being given to applying the principles of the amendments proposed for §§ 1.1502-21, 1.1502-22, and 1.1502-79, as well as the previously proposed amendments, to these rules. Comments are requested on this issue, including appropriate effective dates for the additional amendments.

The proposed regulations published on July 31, 1984 would remove § 1.1502-7 (relating to a tax surcharge during 1970) as deadwood. Another provision that could be removed is § 1.1502-25 (relating to Western Hemisphere trade corporations), including the reference to that section in § 1.1502-11(a)(6). Comments are requested on the removal or revision of these provisions and other provisions relating to deductions or losses. In addition, comments are requested on the need for additional rules relating to deductions or losses.

The amendments described in this document are part of a continuing effort to simplify and update the consolidated return regulations. The revision of the regulations is being completed in stages, however, and the current revisions are limited to those aspects of the consolidated deductions, losses, and credits to which they refer.

#### G. Effective dates

The amendments are proposed generally to apply to consolidated return years ending on or after January 29, 1991. However, the proposed revisions to the SRLY rules are generally to apply only to deductions and losses of corporations that become members of groups on or after January 29, 1991.

The amendments to the CRCO rules are proposed to limit the CRCO rules to CRCOs occurring before January 29, 1991. The amendments do not apply to taxable years with respect to which amended consolidated returns are filed pursuant to § 1.1502-99(c) (relating to transitional rules for the application of section 382), because retroactive application of the amendments might permit a group to absorb net operating losses of a member that left the group before January 29, 1991. The limitations under § 1.1502-21(e) with respect to old section 382 apply only to ownership changes governed by old section 382.

#### Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. These rules, if issued, will apply to consolidated groups, which tend to be

larger entities. Thus, they will generally not have a significant economic impact on a substantial number of small entities nor will they significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f)(1), these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for April 8, 1991, at 10 a.m. must be received by March 29, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

#### Drafting Information

The principal author of these proposed regulations is David P. Madden of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Other personnel of the Internal Revenue Service and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR 1.1501-1 through 1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

#### Proposed Amendments to the Regulations

The proposed amendments to 26 CFR chapter I are as follows:

#### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 is amended in part by adding the following citations:

**Authority:** 26 U.S.C. 7805 \* \* \* §§ 1.1502-0, 1.1502-2, 1.1502-11, 1.1502-15, 1.1502-21, 1.1502-22, 1.1502-23, 1.1502-79, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, and 1.1502-79A also issued under 26 U.S.C. 1502.

**Par. 2.** In the list below, for each section indicated in the left column, remove the wording indicated in the middle column from wherever it appears in that section, and add the wording indicated in the right column.

| Affected section  | Remove   | Add   |
|---|--|---|
| 1.338-1T(f)(3)(iv)  | §§ 1.1502-21 and 1.1502-79                             | § 1.1502-21   |
| 1.338-4T(f)(6)(iv), Answer 3, Example (1)(iii)                              | § 1.1502-21(c)(2)                                      | § 1.1502-21(c)  |
| 1.904(f)-3(a)   | (or §§ 1.1502-21(b) and 1.1502-79(a))                  | (or § 1.1502-21(b))   |
| 1.904(f)-3(b)   | (or §§ 1.1502-22 and 1.1502-79(b))                     | (or § 1.1502-22(b))   |
| 1.1341-1(f)(2)(i)   | § 1.1502-2A  | § 1.1502-2A (as contained in the 26 CFR edition revised as of April 1, 1990)                  |
| 1.1502-9(a)   | § 1.1502-79  | § 1.1502-21(b)  |
| 1.1502-11(b)(4)(i)  | § 1.1502-79(b)(2)                                      | § 1.1502-22(b)  |
| 1.1502-11(b)(4)(ii)   | § 1.1502-21(f)(1)                                      | § 1.1502-21(e)  |
| 1.1502-11(b)(4)(iii)  | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1502-11(b)(4), concluding text  | §§ 1.1502-21, 1.1502-22, and 1.1502-79                 | §§ 1.1502-21(b) and 1.1502-22(b)  |
| 1.1502-11(b)(6), Example (3)(d)   | § 1.1502-79 (a) and (b)                                | §§ 1.1502-21(b) and 1.1502-22(b)  |
| 1.1502-13(h), Example (17)(i)   | § 1.1502-31A   | § 1.1502-31A (as contained in the 26 CFR edition revised as of April 1, 1990)                 |
| 1.1502-15(a)(1) 2nd sentence  | §§ 1.1502-21, 1.1502-22, and 1.1502-79                 | §§ 1.1502-21(b) and 1.1502-22(b)  |
| 1.1502-15(a)(2)(ii)   | § 1.1502-1(f)(1)                                       | § 1.1502-1(f)   |
| 1.1502-15(a)(3)   | § 1.1502-31A(b)(9)                                     | § 1.1502-31A(b)(9) (as contained in the 26 CFR edition revised as of April 1, 1990)           |
| 1.1502-18(f)(1)(i), (1)(iii), (2)(i), (2)(ii), and (4) Example (i) and (ii) | § 1.1502-39A   | § 1.1502-39A (as contained in the 26 CFR edition revised as of April 1, 1990)                 |
| 1.1502-18(f)(5)   | § 1.1502-31A(b)(1)                                     | § 1.1502-31A(b)(1) (as contained in the 26 CFR edition revised as of April 1, 1990)           |
| 1.1502-21(b)(1)   | Paragraph (a) of § 1.1502-79                           | § 1.1502-21(b)  |
| 1.1502-21(b)(1)   | § 1.1502-15  | §§ 1.1502-15 and 1.1502-11(c)   |
| 1.1502-21(b)(2)(i)  | Paragraph (a)(4) of § 1.1502-79                        | § 1.1502-21(b)  |
| 1.1502-21(e)(1)(i)  | Paragraph (a)(3) of § 1.1502-79                        | § 1.1502-21(b)  |
| 1.1502-22(a)(3)   | § 1.1502-15  | §§ 1.1502-15 and 1.1502-11(c)   |
| 1.1502-22(b)(1)   | Paragraph (b) of § 1.1502-79                           | § 1.1502-22(b)  |
| 1.1502-23   | § 1.1502-15(a)   | §§ 1.1502-15 and 1.1502-11(c)   |
| 1.1502-26(a)(1), concluding text  | Paragraph (f) § 1.1502-21                              | § 1.1502-21(e)  |
| 1.1502-31(b)(1)(ii)   | § 1.1502-79(a)(3) or (b)(2)                            | §§ 1.1502-21(b) or 1.1502-22(b)   |
| 1.1502-32(b)(2)(ii)   | § 1.1502-79(a)(3) or (b)(2)                            | §§ 1.1502-21(b) or 1.1502-22(b)   |
| 1.1502-32(d)(5)   | § 1.1502-15(a)   | § 1.1502-15   |
| 1.1502-32(f)(1)(i)  | § 1.1502-34A(b)(2) and (c)                             | § 1.1502-34A(b)(2) and (c) (as contained in the 26 CFR edition revised as of April 1, 1990)   |
| 1.1502-32(f)(1)(i)  | § 1.1502-34A(b)(2) or (c)(2)                           | § 1.1502-34A(b)(2) or (c)(2) (as contained in the 26 CFR edition revised as of April 1, 1990) |
| 1.1502-41(a)  | Paragraph (a)(1) of § 1.1502-22                        | § 1.1502-22   |
| 1.1502-42(f)(4)(i)(A)   | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1502-42(j), Example (4)(b)  | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1502-42(j), Example (4)(c)  | § 1.1502-21(b)(3)                                      | § 1.1502-21(b)  |
| 1.1502-42(j), Example (4)(c)  | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1502-43(b)(2)(v)  | § 1.1502-22(a)   | § 1.1502-22(e)  |
| 1.1502-43(b)(2)(vi)   | § 1.1502-41(a)   | § 1.1502-22(a)  |
| 1.1502-43(b)(2)(vi)   | § 1.1502-41(b)   | § 1.1502-22(e)  |
| 1.1502-47(h)(2)(ii)   | § 1.1502-21(f)   | § 1.1502-21(e)  |
| 1.1502-47(h)(2)(vii), Example   | §§ 1.1502-21 and 1.1502-79                             | § 1.1502-21   |
| 1.1502-47(h)(3)(v), Example (1)   | § 1.1502-21(d)(2)                                      | § 1.1502-21(d)  |
| 1.1502-47(h)(4)(i) 2nd sentence   | § 1.1502-22(a)   | § 1.1502-22(e)  |
| 1.1502-47(h)(4)(iii), intro text  | § 1.1502-22(b)(1)                                      | § 1.1502-22(b)  |
| 1.1502-47(m)(3)(vi)(A)  | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1502-47(m)(3)(vii)  | § 1.1502-21(b)(3)(ii)                                  | § 1.1502-21(b)  |
| 1.1502-47(m)(3)(ix)   | (Including the exceptions in paragraph (a)(4) thereof) | (Including applicable exceptions)   |
| 1.1502-47(o)(2)(i)  | § 1.1502-41  | § 1.1502-22   |
| 1.1502-47(o)(2)(ii)   | § 1.1502-41  | § 1.1502-22   |
| 1.1502-47(q)  | § 1.1502-21(b)(3) and § 1.1502-79(a)(3)                | § 1.1502-21(b)  |
| 1.1502-78(a)  | § 1.1502-79(a), (b), or (c)                            | §§ 1.1502-21(b), 1.1502-22(b), or 1.1502-79(c)  |
| 1.1502-79(c)(1)   | Paragraph (a)(1) and (2) of this section               | § 1.1502-21(b)  |
| 1.1502-79(d)(1)   | Paragraph (a)(1) and (2) of this section               | § 1.1502-21(b)  |
| 1.1502-79(e)(1)   | Paragraph (a)(1) and (2) of this section               | § 1.1502-21(b)  |
| 1.1503-2T(f)(1)(i), intro text  | § 1.1502-79(a)(3)                                      | § 1.1502-21(b)  |
| 1.1503-2T(f)(1)(i)(C)   | Paragraph (b)(2) of § 1.1502-79                        | § 1.1502-22(b)  |
| 1.1503-2T(f)(2)(i)  | § 1.1502-21(c)(2)                                      | § 1.1502-21(c)  |
| 1.1503-2T(f)(2)(ii)   | § 1.1502-21(c)(2)                                      | § 1.1502-21(c)  |
| 1.1503-2T(f)(4), Example (2) (iv)   | § 1.1502-21(c)(2)                                      | § 1.1502-21(c)  |
| 1.1552-1(a)(3)(i)   | § 1.1502-30A   | § 1.1502-30A (as contained in the 26 CFR edition revised as of April 1, 1990)                 |
| 1.1552-1(b)(1)  | § 1.1502-30A   | § 1.1502-30A (as contained in the 26 CFR edition revised as of April 1, 1990)                 |

### § 1.1501-1 [Removed]

Par. 3. Section 1.1501-1 is removed.

Par. 4. The undesignated centerheading immediately following § 1.1502-100 is revised from "REGULATIONS APPLICABLE TO TAXABLE YEARS PRIOR TO JANUARY 1, 1966" to "REGULATIONS

### GENERALLY APPLICABLE TO TAXABLE YEARS BEFORE JANUARY 29, 1991.

Par. 5. Sections § 1.1502-0A through 1.1502-3A, 1.1502-10A through 1.1502-19A, and 1.1502-30A through 1.1502-51A are removed.

Par. 6. Section 1.1502-0 is revised to read as follows:

### § 1.1502-0 Effective dates.

(a) The regulations under section 1502 are applicable to taxable years beginning after December 31, 1965, except as otherwise provided therein.

(b) The provisions of §§ 1.1502-0A through 1.1502-3A, 1.1502-10A through 1.1502-19A, and 1.1502-30A through 1.1502-51A (as contained in the 26 CFR edition revised as of April 1, 1990) are applicable to taxable years beginning before January 1, 1966.

Par. 7. Section 1.1502-1 is amended by revising paragraphs (b) and (f)(1), and the introductory text of paragraphs (f)(2), adding new paragraphs (f)(4), (i), (j), and (k), to read follows:

**§ 1.1502-1 Definitions.**

(b) *Member.* The term "member" means a corporation (including the common parent) that is included in the group, or as the context may require, a corporation that is included in a subgroup.

(f) *Separate return limitation year—*  
(1) *In general.* Except as provided in paragraphs (f) (2) and (3) of this section, the term "separate return limitation year" (or "SRLY") means any separate return year of a member or of a predecessor of a member.

(2) *Exceptions.* The term "separate return limitation year" (or "SRLY") does not include:

(4) *Predecessors and successors.* The term "predecessors" means a transferor or distributor of assets to a member (the "successor") in a transaction:

(i) To which section 381(a) applies; or  
(ii) In which the successor's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the basis of the assets of the transferor or distributor, but only if the amount by which basis exceeds value, in the aggregate, is material.

Paragraph (f)(4)(ii) of this section does not apply with respect to corporations that become members, and to acquisitions occurring, before January 29, 1991.

(i) [Reserved]

(j) *Affiliated.* Corporations are affiliated if they are members of a group with each other.

(k) *Cross references.* References to sections include, as the context may require, references to corresponding sections of current regulations or regulations generally effective for taxable years before January 29, 1991. For example, a reference to § 1.1502-15 may be to § 1.1502-15A, and a reference to § 1.1502-79 may be to either § 1.1502-21(b) or § 1.1502-79A.

Par. 8. Paragraph (h) of § 1.1502-2 is revised to read as follows:

**§ 1.1502-2 Computation of tax liability.**

(h) The tax imposed by section 1201, instead of the taxes computed under paragraphs (a) and (g) of this section, computed by reference to the net capital gain of the group (see § 1.1502-22);

Par. 9A. Paragraph (b) of § 1.1502-15 is redesignated as new paragraph (c) of § 1.1502-11, and the heading of newly designated paragraph (c) is revised to read as set forth below:

**§ 1.1502-11 Consolidated taxable income.**

(c) *Disallowance of loss attributable to pre-1966 distributions.*

Par. 9B. The remainder of § 1.1502-15 is redesignated as § 1.1502-15A and is amended by revising the section title and by adding a new paragraph (b). The revised and added provisions read as follows:

**§ 1.1502-15A Limitations on built-in deductions with respect to acquisitions before January 29, 1991.**

(b) *Effective date.* This section applies with respect to corporations that become members, and to acquisitions occurring, before January 29, 1991.

Par. 9C. New § 1.1502-15 is added to read as set forth below:

**§ 1.1502-15 SRLY limitation on built-in losses.**

(a) *SRLY limitation.* Built-in losses are subject to the SRLY limitation under §§ 1.1502-21(c) and 1.1502-22(c) (including applicable subgroup principles). Built-in losses are treated as deductions or losses in the year recognized, except for the purpose of determining the amount of, and the extent to which the built-in loss is limited by, the SRLY limitation for the year in which it is recognized. Solely for such purpose, the recognized built-in loss is treated as a hypothetical net operating loss carryover or net capital loss carryover arising in a SRLY, instead of as a deduction or loss in the year recognized. The extent a built-in loss is not allowable because of a SRLY limitation in the year of recognition, it is treated as a separate net operating loss or net capital loss carryover or carryback arising in the year of recognition and, under § 1.1502-21(c) or § 1.1502-22(c), the year of recognition is treated as a SRLY.

(b) *Built-in losses—(1). Defined.* If a corporation has a net unrealized built-in loss under section 382(h)(3) (as modified by this section) when it becomes a member of the group (whether or not the group is a consolidated group at that

time), its deductions and losses are built-in losses under this section to the extent they are treated as recognized built-in losses under section 382(h)(2)(B) (as modified by this section). This paragraph (b) generally applies separately with respect to each member, but see paragraph (c) of this section for circumstances in which it is applied on a subgroup basis.

(2) *Operating rules.* Solely for purposes of applying paragraph (b)(1) of this section, the principles of § 1.1502-94(c) apply with appropriate adjustments, including the following:

(i) *Ownership change.* A corporation is treated as having an ownership change under section 382(g) on the date that the corporation becomes a member of a group, and no other events (e.g., a subsequent ownership change under section 382(g) while it is a member) are treated as causing an ownership change. In the case of an asset acquisition by a group, the assets and liabilities acquired directly from the same transferor pursuant to the same plan are treated as the assets and liabilities of a corporation that becomes a member of the group (and has an ownership change) on the date of the acquisition.

(ii) *Recognized built-in gain or loss.* Even if the loss is included in the determination of the net unrealized built-in gain or loss, any loss that is disallowed or deferred (e.g., under section 267 or § 1.1502-20) is not treated as recognized built-in loss unless the loss would be allowed during the recognition period without regard to the application of this section. Section 382(h)(1)(B)(ii) does not apply to the extent it limits the amount of recognized built-in loss that may be treated as a pre-change loss to the amount of the net unrealized built-in loss.

(c) *Built-in losses of subgroups—(1) In general.* In the case of a subgroup, the principles of paragraph (b) of this section apply to the subgroup, and not separately to its members. Thus, the net unrealized built-in loss and recognized built-in loss for purposes of paragraph (b) of this section are based on the aggregate amounts for each member of the subgroup.

(2) *Members of subgroups.* A subgroup is composed of those members that have been continuously affiliated with each other for the 60-consecutive-month period ending immediately before they became members of the group in which the loss is recognized. For this purpose, the principles of § 1.1502-21(c)(2) (iv) through (vi) apply with appropriate adjustments.

(3) *Built-in amounts.* Solely for purposes of determining whether the

subgroup has a net unrealized built-in loss or whether it has a recognized built-in loss, the principles of § 1.1502-91 (g) and (h) apply with appropriate adjustments.

(d) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this section are illustrated by the following examples:

*Example 1. Determination of recognized built-in loss.* (a) P buys all the stock of T during Year 1 for \$100, and T becomes a member of the P group. T has three depreciable assets. Asset 1 has an unrealized loss of \$20 (basis \$45, value \$25), asset 2 has an unrealized loss of \$25 (basis \$50, value \$25), and asset 3 has an unrealized gain of \$25 (basis \$25, value \$50).

(b) Under paragraph (b)(2)(i) of this section, T is treated as having an ownership change under section 382(g) on becoming a member of the P group. This treatment does not depend on whether P's acquisition of the T stock actually constitutes an ownership change under section 382(g), or whether T is subject to any limitation under section 382. Under paragraph (b)(1) of this section, none of T's \$45 of unrealized loss is treated as a built-in loss unless T has a net unrealized built-in loss under section 382(h)(3) on becoming a member of the P group.

(c) Under section 382(h)(3)(A), T has a \$20 net unrealized built-in loss on becoming a member of the P group ( $($20) + ($25) + $25 = $20$ ). This amount exceeds the threshold requirement in section 382(h)(3)(B). Under section 382(h)(2)(B), the entire amount of T's \$45 unrealized loss is treated as recognized built-in loss to the extent it is recognized during the 5-year recognition period described in section 382(h)(7). Under paragraph (b)(2)(ii) of this section, the restriction under section 382(h)(1)(B)(ii), which limits the amount of recognized built-in loss that is treated as pre-change loss to the amount of the net unrealized built-in loss, is inapplicable for this purpose. Consequently, the entire \$45 of unrealized loss (not just the \$20 net unrealized loss) is treated under paragraph (b)(1) of this section as built-in loss to the extent it is recognized within 5 years of T's becoming a member of the P group. Under paragraph (a) of this section, any recognized built-in loss is subject to the SRLY limitation under § 1.1502-21(c)(1).

(d) Under paragraph (b)(2)(i) of this section, the results would be the same if T transferred all of its assets and liabilities to a subsidiary of the P group in a single transaction described in section 351.

*Example 2. Actual application of section 382 not relevant.* (a) The facts are the same as in Example 1, except that P buys 55 percent of the stock of T during Year 1,

resulting in an ownership change of T under section 382(g). During Year 2, P buys the 45 percent balance of the T stock, and T becomes a member of the P group.

(b) Although T has an ownership change for purposes of section 382 in Year 1 and not Year 2, T's joining the P group in Year 2 is treated as an ownership change under section 382(g) for purposes of this section. Consequently, for purposes of this section, whether T has a net unrealized built-in loss under section 382(h)(3) is determined as if the date T joined the P group were a change date. Thus, the results are the same as in Example 1.

*Example 3. Determination of recognized built-in loss of a subgroup.* (a) During Year 1, P buys all of the stock of S for \$100, and S becomes a member of the P group. M is the common parent of another group. At the beginning of Year 7, M acquires all of the stock of P, and P and S become members of the M group. At the time of M's acquisition of the P stock, P has (without taking into account the stock of S) a \$10 net unrealized built-in gain (two depreciable assets, asset 1 with a basis of \$35 and a value of \$55, and asset 2 with a basis of \$55 and a value of \$45), and S has a \$75 net unrealized built-in loss (two depreciable assets, asset 3 with a basis of \$95 and a value of \$10, and asset 4 with a basis of \$10 and a value of \$20).

(b) Under paragraph (c) of this section, P and S compose the P subgroup on becoming members of the M group because P and S were continuously affiliated for the 60-month period ending immediately before they became members of the M group. Consequently, paragraph (b) of this section does not apply to P and S separately. Instead, their separately computed unrealized gains and losses are aggregated for purposes of determining whether and the extent to which any unrealized loss is treated as built-in loss under this section and is subject to the SRLY limitation under § 1.1502-21(c).

(c) Under paragraph (c) of this section, the P subgroup's net unrealized built-in loss is the aggregate of P's net unrealized built-in gain of \$10 and S's net unrealized built-in loss of \$75, or an aggregate net unrealized built-in loss of \$65. (The stock of S owned by P is not taken into account for purposes of determining the P subgroup's net unrealized built-in loss. However, any loss allowed on the sale of the stock within the recognition period is taken into account in determining recognized built-in loss.) The P subgroup's \$65 net unrealized built-in loss exceeds the threshold requirement under section 382(h)(3)(B).

(d) Under section (b)(2)(ii) of this section, the entire amount of any P or S asset's unrealized loss is treated as recognized built-in loss to the extent it is recognized during the 5-year recognition period. If P sells asset 2 for \$45 in Year 7 and recognizes a \$10 loss, the entire \$10 loss is treated as a recognized built-in loss under this section. If S sells asset 3 for \$10 in Year 7 and recognizes an \$85 loss, the entire \$85 loss is treated as a recognized built-in loss under paragraph (b)(2)(ii) of this section (not just the \$55 balance of the P subgroup's \$65 net unrealized built-in loss).

(e) The determination of whether P and S constitute a SRLY subgroup for purposes of loss carryovers and carrybacks, and the

extent to which built-in losses are not allowed under the SRLY limitation, is made under § 1.1502-21(c).

*Example 4. Computation of SRLY limitation.* (a) During Year 1, individual A forms T by contributing \$300 and T sustains a \$100 net operating loss. During Year 2, T's assets decline in value to \$100. At the beginning of Year 3, P buys all the stock of T for \$100, and T becomes a member of the P group with a net unrealized built-in loss of \$100, which exceeds the threshold requirements of section 382(h)(3)(B). During Year 3, T recognizes its unrealized built-in loss as a \$100 ordinary loss. The members of the P group contribute the following net income to the consolidated taxable income of the P group (computed without taking into account T's recognition of its unrealized built-in loss and any consolidated net operating loss deduction under § 1.1502-21) for Years 3 and 4:

|                          | Year 3 | Year 4 | Total |
|--------------------------|--------|--------|-------|
| P group (without T)..... | \$100  | \$100  | \$200 |
| T.....                   | 60     | 40     | 100   |
| CTI.....                 | \$160  | \$140  | \$300 |

(b) Under paragraph (b) of this section, T's \$100 of ordinary loss in Year 3 (not taken into account in the consolidated taxable income computations above) is recognized in that year and thus a recognized built-in loss. Under paragraph (a) of this section, the recognized built-in loss is treated as a net operating loss carryover for purposes of determining the SRLY limitation under § 1.1502-21(c).

(c) For Year 3, § 1.1502-21(c) limits T's \$100 built-in loss and \$100 net operating loss carryover from Year 1 to the aggregate of the P group's consolidated taxable income through Year 3 determined by taking into account only T's items. For this purpose, consolidated taxable income is determined without regard to any consolidated net operating loss deductions under § 1.1502-21(a).

(d) The P group's consolidated taxable income through Year 3 is \$60 when determined by taking into account only T's items. Under § 1.1502-21(c), the SRLY limitation for Year 3 is therefore \$60.

(e) Under paragraph (a) of this section, the \$100 built-in loss is treated as a current deduction for all purposes other than determination of the SRLY limitation under § 1.1502-21(c). Consequently, a deduction for the built-in loss is allowed in Year 3 before T's loss carryover from Year 1 is taken into account, but only to the extent of the \$60 SRLY limitation.

(f) The \$40 balance of the recognized built-in loss that is not allowed in Year 3 because of the SRLY limitation is treated as a \$40 net operating loss arising in Year 3 that is carried to other years in accordance with the rules of § 1.1502-21(b). The \$40 net operating loss is treated under paragraph (a) of this section and § 1.1502-21(c)(1)(ii) as a loss carryover or carryback from Year 3 that arises in a SRLY, and is subject to the rules of § 1.1502-21

(including § 1.1502-21 (c)) rather than this section.

(g) The facts are the same as in (a) through (f), except that T also recognizes additional built-in losses in Year 4. For purposes of determining the SRLY limitation with respect to these additional losses in Year 4 (or any subsequent year), the \$80 of recognized built-in loss allowed as a deduction in Year 3 is treated under paragraph (a) of this section as a deduction in Year 3 that reduces the P group's consolidated taxable income when determined by taking into account only T's items.

**Example 5.** Recognized built-in loss exceeding consolidated taxable income in the year recognized. (a) P buys all the stock of T during Year 1, and T becomes a member of the P group. At the time of acquisition, T has a depreciable asset with an unrealized loss of \$45 (basis \$100, value \$55), which exceeds the threshold requirements of section 382(h)(3)(B). During Year 2, T sells its asset for \$55 and recognizes the unrealized built-in loss. The P group has \$10 of consolidated taxable income in Year 2, computed without taking into account T's recognition of the \$45 loss or the consolidated net operating loss deduction, while the consolidated taxable income would be \$25 if determined by taking into account only T's items.

(b) T's \$45 loss is recognized in Year 2 and, under paragraph (b) of this section, constitutes a recognized built-in loss. Under paragraph (a) of this section and § 1.1502-21(c)(1)(ii), the loss is treated as a net operating loss carryover to Year 2 for purposes of applying the SRLY limitation under § 1.1502-21(c).

(c) For Year 2, T's SRLY limitation is the aggregate of the P group's consolidated taxable income through Year 2 determined by taking into account only T's items. For this purpose, consolidated taxable income is determined without taking into account any recognized built-in loss because it is treated as a net operating loss carryover and consolidated taxable income is determined without taking into account any consolidated net operating loss deductions under § 1.1502-21(a). Consolidated taxable income, determined without regard to the \$45 recognized built-in loss and by taking into account only T's items, is \$25.

(d) Under § 1.1502-21(c), \$25 of the \$45 recognized built-in loss can be deducted in Year 2. Because the P group has only \$10 of consolidated taxable income (determined without regard to the \$45), the \$25 loss creates a consolidated net operating loss of \$15. This loss is carried back or over under the rules of § 1.1502-21(b) and absorbed under the rules of § 1.1502-21(a). This loss is not treated as arising in a SRLY (see § 1.1502-21(c)(1)(ii)) and therefore is not subject to the SRLY limitation under § 1.1502-21(c) in any consolidated return year of the group to which it is carried. The remaining \$20 is treated as a loss carryover arising in a SRLY and is subject to the limitation of § 1.1502-21(c) in the year to which it is carried.

(e) **Predecessors and successors.** For purposes of this section, any reference to a corporation or member, includes, as

the context may require, a reference to a successor or predecessor, as defined in § 1.1502-1(f)(4).

(f) **Effective date.** This section applies with respect to corporations that become members, and to acquisitions occurring, on or after January 29, 1991. For rules applicable with respect to corporations that become members, and to acquisitions occurring, before January 29, 1991, see § 1.1502-15A.

**Par. 10A.** Section 1.1502-21 is redesignated as § 1.1502-21A, and is amended by revising the section title and paragraphs (c)(1) and (d)(1), and by adding a new paragraph (g). The revised and added provisions read as follows:

**§ 1.1502-21A Consolidated net operating loss deduction to which § 1.1502-21 does not apply.**

**(c) Limitation on net operating loss carryovers and carrybacks from separate return limitation years—(1) General rule.** In the case of a net operating loss of a member of the group arising in a separate return limitation year (as defined in paragraph (f) of § 1.1502-1) of the member (and in a separate return limitation year of any predecessor of the member) that is:

(i) Carried to taxable years ending before January 29, 1991, the amount that may be included under paragraph (b) of this section in the consolidated net operating loss carryovers and carrybacks to a consolidated return year of the group shall not exceed the amount determined under paragraph (c)(2) of this section (computed without regard to the limitation contained in paragraph (d) of this section); or

(ii) Carried to taxable years ending on or after January 29, 1991, the amount that may be included under § 1.1502-21(b) in the net operating loss carryovers and carrybacks to a consolidated return year of the group shall not exceed the amount determined under paragraph (c)(2) of this section (computed without regard to the limitation contained in paragraph (d) of this section).

(iii) Carried to taxable years ending on or after January 29, 1991, the amount that may be included under § 1.1502-21(b) in the net operating loss carryovers and carrybacks to a consolidated return year of the group shall not exceed the amount determined under paragraph (c)(2) of this section (computed without regard to the limitation contained in paragraph (d) of this section).

**(d) Limitation on carryovers where there has been a consolidated return change of ownership—(1) General rule.** The aggregate of the net operating losses attributable to old members of the group (as defined in paragraph (g)(3) of § 1.1502-1) arising in taxable years (consolidated or separate) ending on the same day and before the taxable year in which a consolidated return change of ownership (as defined in paragraph (g) of § 1.1502-1) occurred that is:

(i) Carried to taxable years ending before January 29, 1991, the amount that

may be included under paragraph (b) of this section in the consolidated net operating loss carryovers to a consolidated return year of the group shall not exceed the amount determined under paragraph (d)(2) of this section; or

(ii) Carried to taxable years ending on or after January 29, 1991, the amount that may be included under § 1.1502-21(b) in the net operating loss carryovers to a consolidated return year of the group shall not exceed the amount determined under paragraph (d)(2) of this section.

(g) **Effective date—(1) In general.** This section generally applies to deductions and losses arising in taxable years ending before January 29, 1991. For this purpose a net operating loss deduction arises in the year from which it is carried.

(2) **SRLY limitation.** If a corporation became a member (or an acquisition was made) before January 29, 1991, paragraph (c) of this section applies with respect to the losses or deductions arising in SRLYs (and to built-in deductions treated as net operating losses subject to paragraph (c) of this section under § 1.1502-15A). Section 1.1502-21(c) applies in the case of corporations that become members (and to acquisitions made) on or after that date.

(3) **CRCO limitation.** Paragraph (d) of this section applies with respect to consolidated return changes of ownership occurring before January 29, 1991. For this purpose, § 1.1502-1(g) is applied by treating that date as "the end of the year of change."

(4) **Old section 382.** Paragraph (e) of this section applies with respect to transactions to which old section 382 (defined in § 1.382-2T(f)(21)) applies.

**Par. 10B.** The amendments to § 1.1502-21, as contained in the notice of proposed rulemaking published on July 31, 1984 (49 FR 30528) are withdrawn.

**Par. 10C.** New § 1.1502-21 is added to read as follows:

**§ 1.1502-21 Net operating losses.**

(a) **Consolidated net operating loss deduction.** The consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of:

(1) Any CNOLs (as defined in paragraph (e) of this section) of the group; and

(2) Any net operating losses of the members arising in separate return years.

(b) *Net operating loss carryovers and carrybacks to consolidated return and separate return years.* Net operating losses of members arising during a consolidated return year are taken into account in determining the group's CNOL under paragraph (e) of this section for that year. Losses taken into account in determining the CNOL may be carried to other taxable years (whether consolidated or separate) only under this paragraph (b).

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they were sustained, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. Additional rules provided under the Code or regulations (including the SRLY limitation under paragraph (c) of this section) must also be taken into account. See, e.g., section 382(1)(2)(B).

(2) *Carryovers and carrybacks of CNOLs to separate return years—(i) In general.* If any CNOL that is attributable to a member may be carried to a separate return year of the member, the amount of the CNOL that is attributable to the member is apportioned to the member (apportioned loss) and carried to the separate return year. If carried back to a separate return year, the apportioned loss may not be carried back to an equivalent, or earlier, consolidated return year of the group; if carried over to a separate return year, the apportioned loss may not be carried over to an equivalent, or later, consolidated return year of the group. For rules permitting the reattribution of losses of a subsidiary to the common parent when loss is disallowed on the disposition of subsidiary stock, see § 1.1502-20(g).

(ii) *Special rules—(A) Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first carried to the consolidated return year, and only the amount so attributable that is not absorbed by the group in that year is carried to the corporation's first separate return year.

(B) *Offspring rule.* In the case of a member that has been a member continuously since its organization, the CNOL attributable to the member is included in the carrybacks to

consolidated return years before the member's existence. See § 1.1502-21(f) (relating to predecessors and successors). If the group did not file a consolidated return for a carryback year, the loss may be carried back to a separate return year of the common parent under paragraph (b)(2)(i) of this section, but only if the common parent was not a member of a different consolidated group or of an affiliated group filing separate returns for the year to which the loss is carried or any subsequent year in the carryback period. Following an acquisition described in § 1.1502-75(d) (2) or (3), references to the common parent are to the corporation that was the common parent immediately before the acquisition.

(iii) *Equivalent years.* Taxable years are equivalent if they bear the same numerical relationship to the consolidated return year in which a CNOL arises, counting forward or backward from the year of the loss. For example, in the case of a member's third taxable year (which was a separate return year) that preceded the consolidated return year in which the loss arose, the equivalent year is the third consolidated return year preceding the consolidated return year in which the loss arose. See paragraph (b)(3)(ii) of this section for certain short taxable years not taken in to account in making this determination.

(iv) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member is determined by a fraction the numerator of which is the separate net operating loss of the member for the year of the loss and the denominator of which is the sum of the separate net operating losses for that year of all members having such losses. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by taking in to account only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member).

(v) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b)(2) are illustrated by the following examples:

*Example 1. Offspring rule.* (a) P was formed at the beginning of Year 1 and filed a separate return. P formed S on March 15 of Year 2, and P and S filed consolidated returns. P purchased all the stock of T at the beginning of Year 3, and T became a member of the P group. T had been formed in Year 2 and filed a separate return for that year. P, S, and T, sustained a \$1,100 CNOL in Year 3 and, under paragraph (b)(2)(iv) of this section, the loss is attributable \$200 to P, \$300 to S, and \$600 to T.

(b) Of the \$1,100 CNOL in Year 3, the \$500 amount of the CNOL that is attributable to P and S (\$200 + \$300) may be carried to P's separate return in Year 1. Even though S was not in existence in Year 1, the \$300 amount of the CNOL attributable to S may be carried back to P's separate return in Year 1 because S (unlike T) has been a member of the P group since its organization and P is a qualified parent under paragraph (b)(2)(ii)(B) of this section. To the extent not absorbed in that year, the loss may then be carried in the P group's return in Year 2. The \$600 amount of the CNOL attributable to T is a net operating loss carryback to T's separate return in Year 2.

*Example 2. Departing members.* (a) The facts are the same as in Example 1. In addition, on June 15 of Year 4, P sells all the stock of T, P and S file a consolidated return for Year 4 (which includes the income of T through June 15), and T files a separate return for the period from June 16 through December 31.

(b) The \$600 amount of the CNOL in Year 3 that is attributable to T is apportioned to T and carried back to its separate return in Year 2. To the extent the apportioned loss is not absorbed in T's separate return in Year 2, it must first be carried to the consolidated return in Year 4 before being carried to T's separate return in Year 4. Any portion of the loss not absorbed in T's Year 2 or in the P group's Year 4 is then carried to T's separate return in Year 4.

(3) *Special rules—(i) Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." The statement must be signed by the common parent and filed with the group's income tax return for the consolidated return year in which the loss arises.

(ii) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net operating loss may be carried.

(iii) *Special status losses.* [Reserved]

(c) *Limitations on net operating loss carryovers and carrybacks from separate return limitation years—(1) SRLY limitation—(i) General rule.* The aggregate of the net operating loss carryovers and carrybacks of a member arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate of the consolidated taxable income for all consolidated return years of the group determined by taking into account only the member's items of income, gain, deduction, and loss. For this purpose:

(A) CNOL deductions are not taken into account in determining consolidated taxable income;

(B) Consolidated taxable income is reduced by the member's losses and deductions (including capital losses) actually absorbed by the group in consolidated return years (whether or not absorbed by the member);

(C) In computing amounts included under paragraph (a) of this section in consolidated taxable income, the consolidated return years of the group

taken into account are only those years, including the year to which the loss is carried, that the member has been continuously included in the group's consolidated return, but the years taken into account do not include:

(1) With respect to carryovers, any years ending after the year to which the loss is carried; and

(2) With respect to carrybacks, any years ending after the year in which the loss arose; and

(D) The treatment under § 1.1502-15 of recognized built-in loss as a hypothetical net operating loss carryover in the year recognized is solely for purposes of determining the limitation under this paragraph (c) with respect to the loss in that year and not for any other purpose (thus, for purposes of determining consolidated taxable income for any other losses, recognized built-in loss allowed under this section in the year it arises is taken into account).

(ii) *Losses treated as arising in SRLYs.* If a net operating loss carryover or carryback did not arise in a SRLY but is attributable to a built-in loss (as defined under § 1.1502-15), the carryover or carryback is treated for purposes of this paragraph (c) as arising in a SRLY if the built-in loss was not allowed, after application of the SRLY limitation, in the year it arose. For an illustration, see Example 5 in § 1.1502-15(d).

(iii) *Examples.* The principles of this paragraph (c)(1) are illustrated by the following examples:

*Example 1. Cumulative determination of SRLY limitation.* (a) In Year 1, individual A forms T and T sustains a \$100 net operating loss that is carried forward. P buys all the stock of T at the beginning of Year 2, and T becomes a member of the P group. The P

group has \$300 of consolidated taxable income in Year 2 (computed without regard to the CNOL deduction). Such consolidated taxable income would be \$70 if determined by taking into account only T's items.

(b) T's \$100 net operating loss carryover from Year 1 arose in a SRLY. See § 1.1502-1(f)(2)(iii). Thus, the \$100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for Year 2 is consolidated taxable income determined by taking into account only T's items. Thus \$70 of the loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2.

(c) The facts are the same as in (a), except that such consolidated taxable income (computed without regard to the CNOL deduction and by taking into account only T's items) is a loss of \$370 (or a CNOL). T's \$100 net operating loss carryover from Year 1 is not allowed under the SRLY limitation in Year 2. Moreover, if consolidated taxable income (computed without regard to the CNOL and by taking into account only T's items) did not exceed \$370 in Year 3, the carryover would still be restricted under § 1.1502-21 (c) in Year 3, because the aggregate consolidated taxable income for all consolidated return years of the group computed by taking into account only T's items would not be a positive amount.

*Example 2. Net operating loss carryovers.* (a) In Year 1, individual A forms P and P sustains a \$40 net operating loss that is carried forward. P has no income in Year 2. Unrelated corporation T sustains a net operating loss of \$50 in Year 2 that is carried forward. P buys the stock of T during Year 3, but T is not a member of the P group for each day of the year. P and T file separate returns and sustain net operating losses of \$120 and \$60, respectively, for Year 3. The P group files consolidated returns beginning in Year 4. During Year 4, the P group has \$160 of consolidated taxable income (computed without regard to the CNOL deduction). Such consolidated taxable income would be \$70 if determined by taking into account only T's items. These results are summarized as follows:

|          | Separate year 1 | Separate year 2 | Separate/affiliated year 3 | Consolidated year 4 |
|----------|-----------------|-----------------|----------------------------|---------------------|
| P.....   | \$ (40)         | \$ 0            | \$ (120)                   | \$ 90               |
| T.....   | 0               | (50)            | (60)                       | 70                  |
| CTI..... |                 |                 |                            | \$160               |

(b) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See § 1.1502-1(f)(2)(i). Thus, P's \$40 net operating loss arising in Year 1 and \$120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Under the principles of section 172, paragraph (b) of this section requires that the loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves \$120 of consolidated taxable income available for offset by other loss carryovers.

(c) T's Year 2 and Year 3 are SRLYs with respect to the P group. See § 1.1502-1(f)(2)(ii). Thus, T's \$50 net operating loss arising in Year 2 and \$60 net operating loss arising in Year 3 are subject to the SRLY limitation. Under paragraph (c)(1) of this section, the SRLY limitation for Year 4 is \$70, and under paragraph (b) of this section, T's \$50 loss from Year 2 must be included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. The absorption of this loss leaves \$70 of consolidated taxable income available for offset by other loss

carryovers, and the SRLY limitation is reduced to \$20 (\$70 of initial SRLY limitation, reduced by the \$50 net operating loss already included in the CNOL deductions under paragraph (a) of this section).

(d) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (Year 3). The losses carried over from Year 3 total \$180. Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one arises in a SRLY and the other does not. However, because T's \$60 net

operating loss arising in Year 3 is subject to a \$20 SRLY limitation, the absorption of Year 3 losses is as follows:

Amount of P's Year 3 losses absorbed =  
 $\$120/(\$120 + \$20) \times \$70 = \$60$   
 Amount of T's Year 3 losses absorbed =  $\$20/(\$120 + \$20) \times \$70 = \$10$ .

The absorption of this \$10 of loss further reduces T's SRLY limitation to \$10 (\$70 of initial SRLY limitation, reduced by the \$60 net operating loss already included in the CNOL deductions in Year 4 under paragraph (a) of this section).

(e) P's remaining \$60 of net operating loss is carried over to Year 5. If T has no further items of income, gain, deduction, or loss, during Year 5, T's remaining \$50 of net operating loss is also carried over to Year 5 and is subject to the \$10 SRLY limitation for that year. Consequently, in the absence of further items, up to \$10 of T's \$50 net operating loss carryover may offset the consolidated taxable income of the P group for that year.

**Example 3. Net operating loss carrybacks.**

(a) P owns all of the stock of S and T. The members of the P group contribute the following to the consolidated taxable income of the P group for Years 1, 2, and 3:

|     | Year 1 | Year 2 | Year 3 | Total |
|-----|--------|--------|--------|-------|
| P   | \$100  | \$60   | \$80   | \$240 |
| S   | 20     | 20     | 30     | 70    |
| T   | 30     | 10     | (50)   | (10)  |
| CTI | \$150  | \$90   | \$60   | \$300 |

P sells all of the stock of T to individual A at the beginning of Year 4. For its Year 4 separate return year, T has a net operating loss of \$30.

(b) T's Year 4 is a SRLY with respect to the P group. See § 1.1502-1(f)(1). T's \$30 net operating loss carryback to the P group from Year 4 is not allowed under § 1.1502-21(c) to be included in the CNOL deduction under paragraph (a) of this section for Year 1, 2, or 3, because the P group's consolidated taxable income would not be a positive amount if determined by taking into account only T's items for all consolidated return years through Year 4 (without regard to the \$30 net operating loss). However, the \$30 loss is carried forward to T's Year 5 and succeeding taxable years as provided under the Code.

**Example 4. Computation of SRLY limitation for recognized built-in losses treated as net operating loss carryovers.** (a) In Year 1, individual A forms T by contributing \$300 and T sustains a \$100 net operating loss. During Year 2, T's assets decline in value by \$100. At the beginning of Year 3, P buys all the stock of T for \$100, and T becomes a member of the P group. At the time of the acquisition, T has a \$100 net unrealized built-in loss, which meets the threshold requirements of section 382 (h)(3)(B). During Year 3, T recognizes its unrealized loss as a \$100 ordinary loss. The members of the P group contribute the following to the consolidated taxable income of the P group (computed without regard to T's recognition of its unrealized loss and any CNOL deduction under § 1.1502-21) for Years 3 and 4:

|                     | Year 3 | Year 4 | Total |
|---------------------|--------|--------|-------|
| P group (without T) | \$100  | \$100  | \$200 |
| T                   | 60     | 40     | 100   |
| CTI                 | \$160  | \$140  | \$300 |

(b) Under § 1.1502-15(a), T's \$100 of ordinary loss in Year 3 constitutes a recognized built-in loss that is subject to the SRLY limitation under § 1502-21(c). The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The recognized built-in loss is therefore subject to a \$60 SRLY limitation for Year 3. The recognized built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. Consequently, under paragraph (b) of this section, the \$60 allowed under the SRLY limitation is absorbed by the P group before T's \$100 net operating loss carryover from Year 1 is taken into account.

(c) Under § 1.1502-15(a), the \$40 balance of the recognized built-in loss that is not allowed in Year 3 because of the SRLY limitation is treated as a \$40 net operating loss arising in Year 3 that is subject to the SRLY limitation because under § 1.1502-21(c)(1)(ii), Year 3 is treated as a SRLY, and is carried to other years in accordance with the rules of paragraph (b) of this section. The SRLY limitation for Year 4 is the \$40 excess of T's consolidated taxable income for all consolidated return years through Year 4, over T's net operating losses arising in SRLYs that are included in the CNOL deduction under paragraph (a) of this section for all consolidated return years through Year 4. For this purpose, the consolidated taxable income is \$40 (the sum of \$60 in Year 3 reduced by the \$60 built-in loss allowed in that year, plus \$40 in Year 4), while the amount included in the CNOL deductions under paragraph (a) of this section is \$0.

(d) Under paragraph (c) of this section, \$40 of T's \$100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(2) **SRLY subgroup limitation.** In the case of a net operating loss carryover or carryback for which there is a SRLY subgroup, the principles of paragraph (c)(1) of this section apply to the SRLY subgroup, and not separately to its members. Thus, the contribution to consolidated taxable income and the net operating loss carryovers and carrybacks arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section are based on the aggregate amounts for the members of the SRLY subgroup. A SRLY subgroup may exist only with respect to a carryover or carryback arising in a year that is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to another group

(the former group), whether or not the group is a consolidated group. A separate SRLY subgroup is determined for each such carryover or carryback. A consolidated group may include more than one SRLY subgroup and a member may be a member of more than one SRLY subgroup. Solely for purposes of determining the members of a SRLY subgroup with respect to a loss:

(i) **Carryovers.** In the case of a carryover, the SRLY subgroup is composed of the member carrying over the loss (loss member) and each other member that was a member of the former group and that has been continuously affiliated with the loss member since ceasing to be a member of the former group and until the beginning of the year to which the loss is carried.

(ii) **Carrybacks.** In the case of a carryback, the SRLY subgroup is composed of the member carrying back the loss (loss member) and each other member that is a member of the group from which the loss is carried back and that has been continuously affiliated with the loss member from the year to which the loss is carried through the year in which the loss arises.

(iii) **Built-in losses.** For purposes of applying the principles of paragraphs (c)(2) (i) and (ii) of this section in the case of a carryover or carryback that is, under paragraph (c)(1)(ii) of this section, treated as arising in a SRLY with respect to the group in which the loss arises, the loss is treated as arising in a year that is not a SRLY with respect to each other member of the group in which the loss is recognized that has been continuously affiliated with the member recognizing the built-in loss (the loss member):

(A) From the beginning of a 60 consecutive month period ending immediately before the members became members of the group in which the loss is recognized;

(B) Until the beginning of the year in which the loss is recognized.

(iv) **Principal purpose of avoiding or increasing a SRLY limitation.** The members composing a SRLY subgroup are not treated as a SRLY subgroup if any of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, this paragraph (c). Any member excluded from a SRLY subgroup, if excluded with a principal purpose of so avoiding or increasing any SRLY limitation, is treated as included in the SRLY subgroup.

(v) **Coordination with other limitations.** This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with

other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and § 1.1503-2T. See also § 1.1502-47(q) (relating to preemption of rules for life-nonlife groups).

(vi) *Anti-duplication.* If the same item of income or deduction could be taken into account more than once in determining a limitation under this paragraph (c), or in a manner inconsistent with any other provision of the Code or regulations incorporating this paragraph (c), the item of income or deduction is taken into account only once and in such manner that losses are absorbed in accordance with the ordering rules in paragraph (b) of this section and the underlying purposes of this section.

(vii) *Examples.* The principles of this paragraph (c)(2) are illustrated by the following examples:

*Example 1. Members of SRLY subgroups.*

(a) During Year 1, P sustains a \$50 net operating loss. At the beginning of Year 2, P buys all the stock of S at a time when the aggregate basis of S's assets exceeds their aggregate value by \$70 (as determined under § 1.1502-15). At the beginning of Year 3, P buys all the stock of T. T has a \$60 net operating loss carryover at the time of the acquisition, and T becomes a member of the P group. During Year 4, S forms S1 and T forms T1, and S1 and T1 become members of the P group. M is the common parent of another group. During Year 7, M acquires all of the stock of P, and the former members of the P group become members of the M group for the balance of Year 7. The \$50 and \$60 loss carryovers of P and T are carried to Year 7 of the M group, and the value and basis of S's assets do not change after it becomes a member of the former P group.

(b) Under paragraph (c)(2) of this section, a separate SRLY subgroup is determined with respect to each loss carryover and recognized built-in loss. P's \$50 loss carryover is not treated as arising in a SRLY with respect to the P group but is treated as arising in a SRLY with respect to the M group. See § 1.1502-1(f). Consequently, the carryover is not subject to limitation under paragraph (c) of this section in the P group, but is subject to the limitation in the M group. For Year 7 in the M group, the carryover is subject to the SRLY subgroup limitation under paragraph (c)(2) of this section because it arose in a year that was not a SRLY with respect to the former P group. S, T, S1, and T1 were members of the former P group, and P has been continuously affiliated with these corporations since ceasing to be a member of the former P group. Consequently, P, S, T, S1, and T1 are the members of P's SRLY subgroup with respect to the carryover to Year 7 in the M group.

(c) In the P group, S's \$70 unrealized loss, if recognized within the 5 year recognition period after S becomes a member of the P

group, is subject to limitation under paragraph (c) of this section. See § 1.1502-15 and paragraph (c)(1)(ii) of this section. Because S was not continuously affiliated with P, T, or T1 for 60 months prior to joining the P group, these corporations cannot be included in a SRLY subgroup with respect to S's unrealized loss in the P group. See paragraph (c)(2)(iii) of this section. As a successor to S, S1 is included in a SRLY subgroup with S in the P group; however, because S did not cease to exist, S1's contribution to consolidated taxable income may not be used to increase the consolidated taxable income of the P group that may be offset by the recognized built-in loss. See paragraph (f) of this section. In the M group, S's \$70 unrealized loss, if recognized within the 5 year recognition period after S becomes a member of the M group, is subject to limitation under paragraph (c) of this section. Prior to becoming a member of the M group, S has been continuously affiliated with P (but not T or T1) for 60 months and S1 has remained continuously affiliated with S. Consequently, in Year 7, S, S1, and P compose a SRLY subgroup in the M group with respect to S's unrealized loss, but S1's contribution to consolidated taxable income may not be used to increase the consolidated taxable income of the M group that may be offset by the recognized built-in loss.

(d) In the P group, T's \$60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. P, S, and S1 were not members of the group in which T's loss arose and cannot be members of a SRLY subgroup with respect to the carryover in the P group. See paragraph (c)(2)(i) of this section. As a successor to T, T1 is included in a SRLY subgroup with T in the P group; however, because T did not cease to exist, T1's contribution to consolidated taxable income may not be used to increase the consolidated taxable income of the P group that may be offset by the carryover. In the M group, T's \$60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. T and T1 remain the only members of a SRLY subgroup with respect to the carryover, but T1's contribution to consolidated taxable income may not be used to increase consolidated taxable income of the M group that may be offset by the carryover.

*Example 2. Computation of SRLY subgroup limitation.*

(a) Individual A forms S. Individual B forms T. In Year 2, P buys all the stock of S and T from A and B, and S and T become members of the P group. For Year 3, the P group has a \$45 CNOL, which is attributable to P, and which P carries forward. M is the common parent of another group. At the beginning of Year 4, M acquires all of the stock of P and the former members of the P group become members of the M group.

(b) P's year to which the loss is attributable, Year 3, is a SRLY with respect to the M group. See § 1.1502-1(f)(1). However, P, S, and T compose a SRLY subgroup with respect to the Year 3 loss under paragraph (c)(2)(i) of this section because Year 3 is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to the P group. P's loss is carried over

to the M group's Year 4 and is therefore subject to the SRLY subgroup limitation in paragraph (c)(2) of this section.

(c) In Year 4, the M group has \$10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). However, such consolidated taxable income would be \$45 if determined by taking into account only the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the SRLY subgroup limitation under paragraph (c)(2) of this section with respect to P's net operating loss carryover from Year 3 is \$45. Because the M group has only \$10 of consolidated taxable income in Year 4, however, only \$10 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(d) In Year 5, the M group has \$100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). Neither P, S, nor T has any items of income, gain, deduction, or loss, in Year 5. Although the members of the SRLY subgroup do not contribute to the \$100 of consolidated taxable income in Year 5, the SRLY subgroup limitation for Year 5 is \$35 (the sum of SRLY subgroup consolidated taxable income of \$45 and \$0 in Year 5, less the \$10 net operating loss carryover included in the CNOL deduction under paragraph (a) of this section in Year 4). Therefore, \$35 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 5.

*Example 3. Inclusion in more than one SRLY subgroup.* (a) At the beginning of Year 1, S buys all the stock of T, and T becomes a member of the S group. For Year 1, the S group has a CNOL of \$10, all of which is attributable to S and is carried over to Year 2. At the beginning of Year 2, P buys all the stock of S, and S and T become members of the P group. For Year 2, the P group has a CNOL of \$35, all of which is attributable to P and is carried over to Year 3. At the beginning of Year 3, M acquires all of the stock of P and the former members of the P group members of the M group.

(b) P's and S's net operating losses arising in SRLYs with respect to the M group are subject to limitation under paragraph (c) of this section. P, S, and T compose a SRLY subgroup for purposes of determining the limitation with respect to P's \$35 net operating loss carryover arising in Year 2 because, under paragraph (c)(2)(i) of this section, Year 3 is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to the P group. Similarly, S and T compose a SRLY subgroup for purposes of determining the limitation with respect to S's \$10 net operating loss carryover arising in Year 1 because Year 1 is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to the S group.

(c) S and T are members of both the SRLY subgroup with respect to P's losses and the SRLY subgroup with respect to S's losses. S's and T's items cannot be taken into account under paragraph (c)(2) of this section in determining the SRLY subgroup limitation for both SRLY subgroups for the same

consolidated return year; paragraph (c)(2)(vi) of this section requires the M group to take the items of S and T into account only once so that the losses are absorbed in the order of the taxable years in which they were sustained. Because S's loss was incurred in Year 2, while P's loss was incurred in Year 3, the items will be taken into account in determining the consolidated taxable income of the S and T SRLY subgroup to enable S's loss to be absorbed first. The taxable income of the P, S, and T SRLY subgroup is then computed by including the consolidated taxable income for the S and T SRLY subgroup less the amount of any net operating loss carryover of S that is absorbed after applying this section to the S subgroup for the year.

**Example 4. Corporation leaves a SRLY subgroup.** (a) P and S are members of the P group and the P group has a CNOL of \$30 in Year 1, all of which is attributable to P and carried over to Year 2. At the beginning of Year 2, M acquires all of the stock of P, and P and S become members of the M group. P and S compose a SRLY subgroup with respect to P's net operating loss carryover. For Year 2, consolidated taxable income of the M group determined by taking into account only items of P (and without regard to the CNOL deduction for Year 2) is \$40. However, such consolidated taxable income of the M group determined by taking into account the items of both P and S is a loss of \$20. Thus, the SRLY subgroup limitation under paragraph (c)(2) of this section prevents the M group from including any of P's net operating loss carryover in the CNOL deduction under paragraph (a) of this section in Year 2, and P carries the loss to Year 3.

(b) At the end of Year 2, P sells all of the S stock and S ceases to be a member of the M group and, in turn, ceases to be a member of the P subgroup. For Year 3, consolidated taxable income of the M group is \$50 (determined without regard to the CNOL deduction for Year 3), and such consolidated taxable income would be \$10 if determined by taking into account only items of P. However, the limitation under paragraph (c) of this section for Year 3 with respect to P's net operating loss carryover still prevents the M group from including any of P's loss in the CNOL deduction under paragraph (a) of this section. The reason is that S's items for Year 2 are included in the determination of the SRLY subgroup limitation for Year 3 even though S ceased to be a member of the M group (and the P subgroup) at the end of Year 2. Thus, the M group's consolidated taxable income determined by taking into account only the SRLY subgroup members' items for all consolidated return years of the group through Year 3 (determined without regard to the CNOL deduction) is not a positive amount.

(d) **Coordination with consolidated return change of ownership limitation and old section 382—(1) Consolidated return changes of ownership.** See § 1.1502-21A (d) for rules applicable to consolidated return changes of ownership occurring before January 29, 1991. For this purpose, § 1.1502-1(g) is

applied by treating that date as "the end of the year of change."

(2) **Old section 382.** For the application of old section 382 (defined in § 1.382-2T(f)(21)) to consolidated groups, see § 1.1502-21A(e).

(e) **Consolidated net operating loss.** Any excess of deductions over gross income, as determined under § 1.1502-11(a) (without regard to any consolidated net operating loss deduction), is also referred to as the consolidated net operating loss (or CNOL).

(f) **Predecessors and successors—(1) In general.** For purposes of this section, any reference to a corporation, member, common parent, or subsidiary, includes, as the context may require, a reference to a successor or predecessor, as defined in § 1.1502-1(f)(4).

(2) **Limitation on SRLY subgroups.** Except as the Commissioner may otherwise determine, any increase in the consolidated taxable income of a SRLY subgroup that is attributable to a successor is not taken into account unless the successor acquires substantially all the assets and liabilities of its predecessor and the predecessor ceases to exist.

(g) **Effective date—(1) In general.** This section generally applies to deductions and losses arising in taxable years ending on or after January 29, 1991. For this purpose a net operating loss deduction arises in the year from which it is carried.

(2) **SRLY limitation.** If a corporation became a member (or an acquisition was made) before January 29, 1991, § 1.1502-21A(c) applies instead of paragraph (c) of this section with respect to the losses or deductions arising (or treated as arising under paragraph (c)(1)(ii) of this section) in SRLYs.

(3) **Waiver of carrybacks.** Paragraph (b)(3)(i) of this section applies to net operating losses arising in a taxable year for which the due date of the income tax return (without regard to extensions) is on or after *INSERT DATE 60 DAYS AFTER THE TREASURY DECISION ADOPTING THIS NOTICE OF PROPOSED RULEMAKING IS FILED WITH THE FEDERAL REGISTER*.

**Par. 11A.** Section 1.1502-22 is redesignated as § 1.1502-22A, and is amended by revising the section title and paragraphs (c)(1) and (d)(1), and by adding a new paragraph (e). The revised and added provisions read as follows: § 1.1502-22A *Consolidated net capital gain or loss to which § 1.1502-22 does not apply.*

\* \* \* \* \*

(c) **Limitation on net capital loss carryovers and carrybacks from separate return limitation years—(1) General rule.** In the case of a net capital loss of a member of the group arising in a separate return limitation year (as defined in paragraph (f) of § 1.1502-1) of the member (and in a separate return limitation year of any predecessor of the member) that is:

(i) Carried to taxable years ending before January 29, 1991, the amount that may be included under paragraph (b) of this section shall not exceed the amount determined under paragraph (c)(2) of this section (computed without regard to the limitation contained in paragraph (d) of this section); or

(ii) Carried to taxable years ending on or after January 29, 1991, the amount that may be included under § 1.1502-22(b) shall not exceed the amount determined under paragraph (c)(2) of this section (computed without regard to the limitation contained in paragraph (d) of this section).

\* \* \* \* \*

(d) **Limitation on capital loss carryovers where there has been a consolidated return change of ownership—(1) General rule.** The aggregate of the net capital losses attributable to old members of the group (as defined in paragraph (g)(3) of § 1.1502-1) arising in taxable years (consolidated or separate) ending on the same day and before the taxable year in which a consolidated return change of ownership (as defined in paragraph (g) of § 1.1502-1) occurred that is:

(i) Carried to taxable years ending before January 29, 1991, the amount that may be included under paragraph (b) of this section in the consolidated net capital loss carryovers to a consolidated return year of the group shall not exceed the amount determined under paragraph (d)(2) of this section; or

(ii) Carried to taxable years ending on or after January 29, 1991, the amount that may be included under § 1.1502-22(b) in the net capital loss carryovers to a consolidated return year of the group shall not exceed the amount determined under paragraph (d)(2) of this section.

\* \* \* \* \*

(e) **Effective date—(1) In general.** This section generally applies to gains and losses arising in taxable years ending before January 29, 1991. For this purpose a carryover or carryback arises in the year from which it is carried.

(2) **SRLY limitation.** If a corporation became a member (or an acquisition was made) before January 29, 1991, paragraph (c) of this section applies with respect to the losses arising in

SRLYs (and to built-in deductions treated as net capital losses subject to paragraph (c) of this section under § 1.1502-15A). Section 1.1502-22(c) applies in the case of corporations that become members (and to acquisitions made) on or after that date.

(3) *CRCO limitation.* Paragraph (d) of this section applies with respect to consolidated return changes of ownership occurring before January 29, 1991. For this purpose, § 1.1502-1(g) is applied by treating that date as "the end of the year of change."

Par. 11B. The amendments to § 1.1502-22, as contained in the notice of proposed rulemaking published on July 31, 1984 (49 FR 30528) are withdrawn.

Par. 11C. New § 1.1502-22 is added to read as follows:

**§ 1.1502-22 Consolidated capital gain and loss.**

(a) *Capital gain.* The consolidated capital gain net income for any consolidated return year is determined by taking into account:

(1) The aggregate gains and losses of members from sales or exchanges of capital assets for the year (other than gains and losses to which section 1231 applies);

(2) The consolidated net section 1231 gain for the year (determined under § 1.1502-23); and

(3) The net capital loss carryovers or carrybacks to the year.

Determinations under section 1222, including capital gain net income, net long-term capital gain, and net capital gain, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole.

(b) *Net capital loss carryovers and carrybacks—(1) In General.* The net capital loss carryovers and carrybacks consist of:

(i) Any consolidated net capital losses of the group; and

(ii) Any net capital losses of the members arising in separate return years.

Determinations under section 1222, including net capital gain loss and net short-term capital loss, with respect to members during consolidated return years are not made separately. Instead, consolidated amounts are determined for the group as a whole. Losses included in the consolidated net capital loss may be carried to consolidated return years, and, after apportionment, may be carried to separate return years.

(2) *Carryovers and carrybacks generally.* The net capital loss carryovers and carrybacks to a taxable year are determined under the principles

of section 1212 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they were sustained, and losses carried from taxable years ending on the same date, and which are available to offset consolidated capital gain net income, generally are absorbed on a pro rata basis. Additional rules provided under the Code or regulations must also be taken into account, as well as the SRLY limitation under paragraph (c) of this section. See, e.g., section 382(1)(2)(B).

(3) *Carryovers and carrybacks of consolidated net capital losses to separate return years.* If any consolidated net capital loss that is attributable to a member may be carried to a separate return year under the principles of § 1.1502-21(b)(2), the amount of the consolidated net capital loss that is attributable to the member is apportioned and carried to the separate return year (apportioned loss).

(4) *Specials rules—(i) Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net capital loss may be carried.

(ii) *Special status losses.* [Reserved]

(c) *Limitations on net capital loss carryovers and carrybacks from separate return limitation years.* The aggregate of the net capital losses of a member arising (or treated as arising) in SRLYs that are included in the determination of consolidated capital gain net income for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate of the consolidated capital gain net income for all consolidated return years of the group determined by taking into account only the member's items of gain and loss from capital assets as defined in section 1221 and trade or business assets defined in section 1231(b), including the member's losses actually absorbed by the group in the taxable year (whether or not absorbed by the member). The principles of § 1.1502-21(c) (including the SRLY subgroup principles under § 1.1502-21(c)(2)) apply with appropriate adjustments for purposes of applying this paragraph (c).

(d) *Coordination with consolidated return change of ownership limitation.* See § 1.1502-22A(d) for rules applicable to consolidated return changes of ownership occurring before January 29, 1991. For this purpose, § 1.1502-1(g) is applied by treating that date as "the end of the year of change."

(e) *Consolidated net capital loss.* Any excess of losses over gains, as determined under paragraph (a) of this section (without regard to any carryovers or carrybacks), is also referred to as the consolidated net capital loss.

(f) *Predecessors and successors.* For purpose of this section, the principles of § 1.1502-21(f) apply with appropriate adjustments.

(g) *Effective date—(1) In general.* This section generally applies to gains and losses arising in taxable years ending on or after January 29, 1991. For this purpose a carryover or carryback arises in the year from which it is carried.

(2) *SRLY limitation.* If a corporation became a member (or an acquisition was made) before January 29, 1991, § 1.1502-22A(c) applies instead of paragraph (c) of this section with respect to the losses arising (or treated as arising under the principles of § 1.1502-22 (c)) in SRLYS.

Par. 12A. Section 1.1502-23 is redesignated as § 1.1502-23A, and amended by revising the section title, by designating the existing text as paragraph (a) and adding a new paragraph heading, and by adding a new paragraph (b). The revised and added provisions read as follows:

**§ 1.1502-23A Consolidated section 1231 net gain or loss with respect to taxable years ending before January 29, 1991**

(a) *In general.* \* \* \*

(b) *Effective date.* This section applies to gains and losses arising in taxable years ending before January 29, 1991.

Par. 12B. New section 1.1502-23 is added to read as follows:

**§ 1.1502-23 Consolidated net section 1231 gain or loss.**

(a) *In general.* Net section 1231 gains and losses of members arising during consolidated return years are not determined separately. Instead, the consolidated net section 1231 gain or loss is determined under this section for the group as a whole.

(b) *Recapture of ordinary loss.* [Reserved]

(c) *Effective date.* This section applies to gains and losses arising in taxable years ending on or after January 29, 1991.

Par. 13. Section 1.1502-41 is redesignated as § 1.1502-41A, and amended by revising the section title and adding a new paragraph (c). The revised and added provisions read as follows:

§ 1.1502-41A Determination of consolidated net long-term capital gain and consolidated net short-term capital loss with respect to taxable years ending before January 29, 1991.

(c) *Effective date.* This section applies to gains and losses arising in taxable years ending before January 29, 1991.

Par. 14A. New § 1.1502-79A is added and paragraphs (a) and (b) of § 1.1502-79 are redesignated as paragraphs (a) and (b) of new § 1.1502-79A to read as follows: § 1.1502-79A Separate return years with respect to losses arising in taxable years ending before January 29, 1991.

(c) through (f) [Reserved]

(g) *Effective date.* Paragraphs (a) and (b) of this section apply with respect to losses arising in taxable years ending before January 29, 1991. For this purpose net operating loss deductions, carryovers, and carrybacks arise in the year from which it is carried.

Par. 14B. New paragraphs (a) and (b) are added to § 1.1502-79 to read as follows:

§ 1.1502-79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For losses arising in taxable years ending before January 29, 1991, see § 1.1502-79A(a). For later taxable years, see § 1.1502-21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For losses arising in taxable years ending before January 29, 1991, see § 1.1502-79A(b). For later taxable years, see § 1.1502-22(b).

Par. 15. An undesignated centerheading is added immediately after § 1.1502-79A to read "ADDITIONAL RULES".

Par. 16. The amendments to § 1.1502-79, as contained in the notice of proposed rulemaking published on July 31, 1984 (49 FR 30528), are withdrawn.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-2176 Filed 1-29-91; 11:31 am]

BILLING CODE 4830-01-M

## 26 CFR Part 1

[CO-132-87; CO-77-90 and CO-78-90]

RIN 1545-AL36; 1545-AP14; 1545-AP15

### Regulations Under Section 1502 of the Internal Revenue Code of 1986; Operation of Sections 382 and 383 With Respect to Consolidated Groups; Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups; Consolidated Returns—Limitations of the Use of Certain Losses, Deductions and Credits

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on several proposed regulations relating to the operation of sections 382 and 383 with respect to consolidated returns; the limitations of net operating loss carryforwards and certain built-in losses following an ownership change; and deductions and losses of members using consolidated returns.

**DATES:** The public hearing will be held on Monday, April 8, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, March 25, 1991.

**ADDRESSES:** The public hearing will be held in room 2615, Second floor, 2600 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R, (CO-132-87); (CO-77-90); and/or (CO-78-90), room 4429, Washington, DC 20044. In the alternative, comments and requests to speak (with outlines) may be hand-delivered to: Internal Revenue Service, attention: CC:CORP:T:R (CO-132-87); (CO-77-90); and/or (CO-78-90), room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-343-0232 or 202-566-3935, (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 1502, 382, and 383 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, March 25, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-2177 Filed 1-29-91; 11:32 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

#### Texas Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Withdrawal of proposed amendment.

**SUMMARY:** OSM is announcing the withdrawal of a proposed amendment to the Texas regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertained to permit revisions, self-bonding, and revegetation. The amendment was intended to revise the Texas program to improve operational efficiency and to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135; Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:** By letter dated August 1, 1990, (Administrative Record No. TX-478), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. In response to a letter dated May 20, 1985, that OSM sent to Texas in accordance with 30 CFR 732.17(d), Texas proposed changes to its regulations at Texas Coal Mining Regulations (TCMR) 816.394, 816.395, and 816.396. At its own initiative, Texas proposed changes to its permit revision and self-bonding regulations at TCMR 778.226 and 806.309(j).

OSM published a notice in the August 22, 1990, *Federal Register* (55 FR 34285, Administrative Record No. TX-490) announcing the receipt of the proposed amendment and inviting public comment on its adequacy. The public comment period closed on September 21, 1990. The public hearing scheduled for September 17, 1990, was not held because no one requested an opportunity to testify at a public hearing.

During its review of the amendment, OSM identified concerns relating to permit revisions at TCMR 778.226, self bonding at TCMR 806.309(j), and revegetation at TCMR 816.395. OSM notified Texas of the concerns by letter dated October 5, 1990 (Administrative Record No. TX-486). Texas responded by letter dated December 10, 1990

(Administrative Record No. TX-486), withdrawing the amendment from OSM's consideration. Therefore, the proposed program amendment announced by OSM in the August 22, 1990, *Federal Register* is withdrawn, and part 943 of title 30, chapter VII, subchapter T of the Code of Federal Regulations is not amended.

#### List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1991.

**Raymond L. Lowrie**

*Assistant Director, Western Support Center.*

[FR Doc. 91-2468 Filed 2-8-91; 8:45 am]

BILLING CODE #310-05-M

# Notices

Federal Register

Vol. 56, No. 23

Monday, February 4, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Information Collection Request Under Review

#### AGENCY: ACTION.

**ACTION:** Information collection request under review.

**SUMMARY:** This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency. Under the Paperwork Reduction Act (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose record keeping requirements. ACTION has submitted two copies of the attached information collection proposal to OMB. OMB and ACTION will consider comments on the proposed collection of information and record keeping requirements. ACTION is requesting an expedited review by OMB with final action by March 8, 1991.

**DATES:** OMB and ACTION will consider comments received by March 6, 1991. Comments are to be directed to both of the following addresses:

Janet Smith, ACTION Clearance Officer, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, Tel. (202) 634-9245.

Daniel Chenok, Desk Office for ACTION, Office of Management and Budget, 3200 New Executive Office Bldg., Washington, DC 20503, Tel. (202) 395-7316.

#### SUPPLEMENTARY INFORMATION:

**OFFICE OF ACTION ISSUING PROPOSAL:** Program Analysis and Evaluation Division.

**TITLE OF FORMS:** Project Director Survey, Station Supervisor Survey, In-depth Station Supervisor Survey.

**NEED AND USE:** These forms are needed to conduct an evaluation of the Retired Senior Volunteer Program's (RSVP) activities in alcohol and drug abuse

prevention and education. Information gathered in the evaluation will be used to:

- (1) Provide RSVP management with descriptive information of RSVP volunteer activities relating to drug and alcohol abuse, management requirements for effective RSVP participation, and impacts of RSVP activities on program and community and on providing retired people opportunities for volunteer service; and
- (2) Describe the organization and operation of the most effective RSVP projects for dissemination to other RSVP projects, volunteer organizations, and communities.

*Type of Request:* New.  
*Respondent's Obligation to Reply:* Voluntary.

*Frequency of Collection:* Non-recurring.

*Estimated Number of Annual Responses:* 1,216.

*Average Burden Hours Response:* .32.

*Estimated Annual Reporting or Disclosure Burden:* 390 hours.

Janet Smith,  
Clearance Officer, ACTION.  
January 22, 1991.

### Project Director Survey

1. We would like to begin by asking you to provide us with some general information about your RSVP project.

a. What is the total number of volunteer stations that currently participate in your RSVP project?  
\_\_\_\_\_ Stations

b. How many active volunteers did your project have at the end of the *last quarter*, that is on (date)?  
\_\_\_\_\_ Active Volunteers

c. What was *last quarter's* total number of volunteer service hours?  
\_\_\_\_\_ Total number of Volunteer Hours

2. How long have you been the project director for this RSVP project?  
\_\_\_\_\_ Years and \_\_\_\_\_ Months

3. The next set of questions ask about how you feel about RSVP Volunteers and other older Americans working in the areas of alcohol and drug abuse. Please indicate if you strongly agree, agree, disagree, or strongly disagree with the following statements.

a. Most older Americans are comfortable working with children and teenagers who have a drug or alcohol abuse problem. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

b. Most older Americans are comfortable working with adults who have a drug or alcohol abuse problem. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

c. Most older Americans enjoy working in the area of drug or alcohol prevention. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

d. Most older Americans enjoy working in the area of drug or alcohol treatment. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

e. Most older Americans believe that volunteering to help with drug or alcohol abuse programs would require their going into dangerous places. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

f. Most older Americans have the skills needed to help in alcohol or drug abuse activities. Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

g. Most older Americans prefer to *work directly with clients* in drug or alcohol abuse programs rather than providing supporting services (e.g. clerical assistance). Check one Response Code

\_\_\_ 1=Strongly Agree

\_\_\_ 2=Agree

\_\_\_ 3=Neither Agree or Disagree

\_\_\_ 4=Disagree

\_\_\_ 5=Strongly Disagree

- h. Most older Americans are physically able to perform the tasks assigned in drug or alcohol abuse programs. Check one Response Code
- 1=Strongly Agree
  - 2=Agree
  - 3=Neither Agree or Disagree
  - 4=Disagree
  - 5=Strongly Disagree
- i. Most older Americans prefer to work in program areas that *are not* involved in drug or alcohol abuse. Check one Response Code
- 1=Strongly Agree
  - 2=Agree
  - 3=Neither Agree or Disagree
  - 4=Disagree
  - 5=Strongly Disagree
- j. Do you think that arranging RSVP volunteer schedules (hours, term assignments, etc.) for alcohol or drug abuse prevention and treatment activities would be more difficult, about the same, or less difficult than other program areas? Check one Response Code
- 1=More Difficult
  - 2=About the Same
  - 3=Less Difficult
- k. Do you think that RSVP volunteer transportation to alcohol or drug abuse prevention and treatment activities would be more of a problem, about the same, or less of a problem than to other program areas? Check one Response Code
- 1=More of a Problem
  - 2=About the Same
  - 3=Less of a Problem
- l. Do you think that recruiting volunteers to work in alcohol or drug abuse prevention or treatment would be more difficult, about the same, or less difficult than other program areas? Check one Response Code
- 1=More of a Problem
  - 2=About the Same
  - 3=Less of a Problem
- m. Do you think that training RSVP volunteers for alcohol or drug abuse prevention and treatment activities would be more difficult, about the same, or less difficult than other program areas? Check one Response Code
- 1=More Difficult
  - 2=About the Same
  - 3=Less Difficult
- n. Do you think that supervising RSVP volunteers in alcohol or drug abuse prevention and treatment activities would be more difficult, about the same, or less difficult than other program areas? Check one Response Code
- 1=More Difficult
  - 2=About the Same
  - 3=Less Difficult
- o. Do you think that coordination with stations involved in alcohol or drug abuse prevention and treatment activities would be more difficult, about the same, or less difficult than stations with other program areas? Check one Response Code
- 1=More Difficult
  - 2=About the Same
  - 3=Less Difficult
- The next questions refer to your project's use of RSVP volunteers in the following areas:
- Alcohol abuse prevention and education  
Alcohol treatment  
Drug abuse prevention and education  
Drug abuse treatment, and  
Preventing the misuse of prescription or over the counter medications  
Other Alcohol or Drug abuse areas
4. Are you interested in developing or expanding RSVP activities in the areas of drug and alcohol abuse? Check one Response
- 1=Yes, Very Interested
  - 2=Yes, Somewhat Interested
  - 3=No => Skip to Question 8
5. Which of the following would be most helpful to you in trying to develop or expand drug and alcohol abuse activities? Check one Response
- 1=Information on drug/alcohol related activities that are being done by older Americans.
  - 2=Information on how to recruit, select, or train older volunteers for drug/alcohol activities
  - 3=Information on how to work with local organizations doing drug/alcohol activities
  - 4=Something else, Please describe
6. Which of the following sources of information would be most helpful to you in trying to develop drug and alcohol abuse activities? Check one Response
- 1=Brochures or reports
  - 2=Video Tapes
  - 3=Workshops
  - 4=Technical Assistance from the ACTION office
  - 5=Something else, Please describe
7. Do you have or have you ever had RSVP volunteers working in any of the above areas? Check one Response
- 1=Yes => Skip to Question 10
  - 2=No
8. Within the next 6 months, do you plan to have new RSVP volunteer activities or stations in drug or alcohol abuse areas? Check one Response
- 1=Yes => Skip to Question 23
  - 2=No
- Thank you for your help, please return the questionnaire in the enclosed envelope.
- This section asks about alcohol and drug abuse activities your project has had in the past.
9. Excluding your current activities, in the past 3 years have you had RSVP stations in the following areas that no longer use RSVP volunteers? Check one Response Code for Each Type of Program
- a. Alcohol Abuse Prevention and Education?
- 1=Yes
  - 2=No
- b. Alcohol Abuse Treatment?
- 1=Yes
  - 2=No
- c. Drug Abuse Prevention and Education?
- 1=Yes
  - 2=No
- d. Drug Abuse Treatment?
- 1=Yes
  - 2=No
- e. Prevention in the misuse of prescription and over-the-counter drugs?
- 1=Yes
  - 2=No
- f. Other alcohol or drug abuse area? Please describe: \_\_\_\_\_
- 1=Yes
  - 2=No
10. In total, how many stations *did you have in the past 3 years* that used to use RSVP volunteers to help with alcohol or drug abuse programs? \_\_\_\_\_ Stations that used to use RSVP volunteers
11. Based on your experience, what are the major reasons why stations stopped using RSVP volunteers in alcohol or drug abuse programs? Check all that Apply
- 1=Station closed
  - 2=Volunteers could not be recruited/retained
  - 3=Station no longer had tasks appropriate for RSVP volunteers
  - 4=Other Reason, Please Specify: \_\_\_\_\_
12. Do you *currently* have RSVP volunteers working in any alcohol or drug abuse education, prevention, or treatment activities? Check one Response Code
- 1=Yes
  - 2=No => Skip to Question 23
- Please answer the following questions about your current activities in these areas:
- alcohol prevention and education,  
alcohol treatment,  
drug abuse prevention and education,  
drug abuse treatment, and  
misuse of prescription or over-the-counter medications.

13. Do you currently run any RSVP volunteer services in alcohol or drug abuse areas directly from your office (that is, without the aid of a station)? Check one Response

- 1=Yes
- 2=No

way with activities relating to drug and/or alcohol education, prevention, and/or treatment?

14. Including any services run from your office, how many of your RSVP Volunteer stations are involved in any

\_\_\_\_\_ Stations

**Please complete a Station Column for Each Station That has Alcohol or Drug Abuse Activities**

[If you run drug or alcohol abuse activities from your office, please include your office as a station]

|   | Station #1  | Station #2  |
|---|---|---|
| 15. Please provide the following information for each station with drug or alcohol activities                     |   |   |
| a. Name of Station:.....  | _____   | _____   |
| b. Name of Station Supervisor:.....   | _____   | _____   |
| c. Station Address .....  | _____   | _____   |
| d. Station Supervisor Phone #.....  | _____   | _____   |
| 16. What type of drug or alcohol abuse activities does this station have? Check all that Apply                    | <input type="checkbox"/> 1 Alcohol Prev/Ed<br><input type="checkbox"/> 2 Alcohol Treat.<br><input type="checkbox"/> 3 Drug Prev/Ed.<br><input type="checkbox"/> 4 Drug Treat.<br><input type="checkbox"/> 5 Drug Misuse<br><input type="checkbox"/> 6 Other (Specify) _____ | <input type="checkbox"/> 1 Alcohol Prev/Ed<br><input type="checkbox"/> 2 Alcohol Treat.<br><input type="checkbox"/> 3 Drug Prev/Ed.<br><input type="checkbox"/> 4 Drug Treat.<br><input type="checkbox"/> 5 Drug Misuse<br><input type="checkbox"/> 6 Other (Specify) _____ |
| 17. What population(s) does this station target for drug or alcohol prevention or treatment? Check all that Apply | <input type="checkbox"/> 1 Older Adults<br><input type="checkbox"/> 2 Children/Youth<br><input type="checkbox"/> 3 General<br><input type="checkbox"/> 4 Other (Specify) _____<br>_____ Volunteers  | <input type="checkbox"/> 1 Older Adults<br><input type="checkbox"/> 2 Children/Youth<br><input type="checkbox"/> 3 General<br><input type="checkbox"/> 4 Other (Specify) _____<br>_____ Volunteers  |
| 18. How many RSVP volunteers were working at this station at the end of the last quarter?                         | _____ %   | _____ %   |
| 19. What percent of these RSVP volunteers assisted with the station's activities in alcohol and drug abuse?       | _____ %   | _____ %   |
| 20. How long have RSVP volunteers helped with the drug or alcohol abuse activities?                               | _____ Months<br>_____ Years   | _____ Months<br>_____ Years   |
| 21. Would you say that this station's ability to:   |   |   |
| a. Retain RSVP volunteers for drug or alcohol abuse activities is:.....   | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   |
| b. Manage the work of RSVP Volunteers in drug or alcohol abuse activities is:.....                                | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   |
| c. Make RSVP volunteers working in drug or alcohol abuse feel appreciated is: .....                               | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   |
| d. Provide rewarding opportunities for RSVP Volunteers working in drug or alcohol abuse is:.....                  | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   | <input type="checkbox"/> 1 Excellent<br><input type="checkbox"/> 2 Very Good<br><input type="checkbox"/> 3 Good<br><input type="checkbox"/> 4 Fair<br><input type="checkbox"/> 5 Poor   |

23. Within the next 6 months, do you plan to begin new RSVP volunteer activities or stations working in: Check one Response Code for Each Area

a. Alcohol Abuse Prevention and Education?

- 1=Yes
- 2=No

b. Alcohol Abuse Treatment?

- 1=Yes
- 2=No

c. Drug Abuse Prevention and Education?

- 1=Yes
- 2=No

d. Drug Abuse Treatment?

- 1=Yes
- 2=No

e. Prevention in the misuse of prescription and over the counter drugs?

- 1=Yes
- 2=No

f. Other Alcohol or Drug Abuse Area? Please Specify: \_\_\_\_\_

- 1=Yes
- 2=No

24. In total, how many new stations do you plan to have in the areas of alcohol or drug abuse?

\_\_\_\_\_ Stations

25. Do you currently have a waiting list of volunteers who want to work in drug or alcohol prevention and/or treatment programs? Check one Response Code

- 1=Yes
- 2=No → Skip to Question 27

26. About how many RSVP volunteers do you have on a waiting list for drug and alcohol programs?

\_\_\_\_\_ RSVP Volunteers

27. Have you tried to recruit additional stations that have drug or alcohol abuse activities in the past 6 months? Check one Response Code

- 1=Yes
- 2=No

28. What is the main barrier in planning a program in the area of drug or alcohol prevention, education, or treatment? Check one Response Code

- 1=Cost of recruiting new volunteers
- 2=Lack of RSVP volunteers who want to work in drug or alcohol abuse
- 3=Lack of stations that request



decision making, coping skills, problem solving, values clarification, communication skills)  
 \_\_\_4= Peer resistance skill training (refusal skills, Just Say No)  
 \_\_\_5= Alternatives (e.g., substance-free hobby or recreation activities)  
 \_\_\_6= Hotline  
 \_\_\_7= Informational programs for persons at risk (e.g., information on danger of over-the-counter prescription drug misuse)  
 \_\_\_8= One on one interpersonal activities such as tutoring, mentoring, etc.  
 \_\_\_9= Other (Specify) \_\_\_\_\_

10. During the last month when your organization was in full operation, how many *volunteer* hours were spent on the following in the drug/alcohol area: Enter a Number or "0".

11. How many of these hours were provided by RSVP volunteers?

a. Public information campaigns:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

b. Counseling or therapy:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

c. Affective education:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

d. Peer resistance skill training:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

e. Alternatives:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

f. Hotline:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

g. Informational programs for persons at risk:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

h. Clerical assistance:

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

i. Other (Specify) \_\_\_\_\_

\_\_\_\_\_  
 Total Hours

\_\_\_\_\_  
 RSVP Hours

If you only use rsvp volunteers please skip to question 13.

12. Among volunteers working in the drug/alcohol area, how do RSVP Volunteers compare with other volunteers working in your organization on:

a. Ability to learn job:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

b. Dependability:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

c. Need for Supervision:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

d. Ability to get along with staff:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

e. Clients feel at ease with volunteer:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

f. Retention:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

g. Availability to work on schedule needed:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

h. Willingness to work on schedule needed:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

i. Empathy with clients:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

j. Willingness to do the kinds of tasks they are asked to do:

- \_\_\_1=RSVP volunteers are Better
- \_\_\_2=They are about the Same
- \_\_\_3=They have More Problems

13. What is the main advantage to your organization of using RSVP volunteers in drug/alcohol activities? MARK UP TO THREE RESPONSE CODES

- \_\_\_1=They are additional people to help provide needed services
- \_\_\_2=Interest and enthusiasm
- \_\_\_3=Have valuable knowledge
- \_\_\_4=Have valuable skills
- \_\_\_5=Life experiences
- \_\_\_6=Ability to empathize with clients
- \_\_\_7=Dependable
- \_\_\_8=Other (specify): \_\_\_\_\_

14. Based on your experience, what do RSVP volunteers find most rewarding in their drug/alcohol work in your organization? CHECK ONE RESPONSE CODE

- \_\_\_1=Working with other volunteers and paid staff of the organization
- \_\_\_2=Interactions with clients
- \_\_\_3=Developing new skills or obtaining information
- \_\_\_4=Other (specify): \_\_\_\_\_

15. For each of the following management activities for RSVP volunteers working in alcohol/drug areas in your organization, please indicate who does most of the management:

|   | RSVP project does most work | Your organization does most work | Both do equal amounts | Does not apply |
|---|-----------------------------|----------------------------------|-----------------------|----------------|
| a. Volunteer recruitment.....                                     | 1                           | 2                                | 3                     | 4              |
| b. Volunteer screening.....                                       | 1                           | 2                                | 3                     | 4              |
| c. Initial training and orientation.....                          | 1                           | 2                                | 3                     | 4              |
| d. Job-specific training.....                                     | 1                           | 2                                | 3                     | 4              |
| e. Volunteer Recognition.....                                     | 1                           | 2                                | 3                     | 4              |
| f. Assistance in problems experienced in doing volunteer job..... | 1                           | 2                                | 3                     | 4              |
| g. Other volunteer management (specify).....                      | 1                           | 2                                | 3                     | 4              |

16. For your organization to make the best possible use of RSVP volunteers in

alcohol/drug activities—do you need

additional management help from the RSVP project in:

|   | No additional help needed | Would like some additional help from RSVP project | Need substantial additional help | Does not apply |
|---|---------------------------|---|----------------------------------|----------------|
| a. Volunteer recruitment.....                                     | 1                         | 2   | 3                                | 4              |
| b. Volunteer screening.....                                       | 1                         | 2   | 3                                | 4              |
| c. Initial training and orientation.....                          | 1                         | 2   | 3                                | 4              |
| d. Job-specific training.....                                     | 1                         | 2   | 3                                | 4              |
| e. Volunteer Recognition.....                                     | 1                         | 2   | 3                                | 4              |
| f. Assistance in problems experienced in doing volunteer job..... | 1                         | 2   | 3                                | 4              |
| g. Information on volunteers interests.....                       | 1                         | 2   | 3                                | 4              |
| h. Other volunteer management (specify).....                      | 1                         | 2   | 3                                | 4              |

17. How important are RSVP volunteers to the success of your organization? CHECK ONE RESPONSE CODE

- \_\_\_ 1=Very important
- \_\_\_ 2=Important
- \_\_\_ 3=Somewhat important
- \_\_\_ 4=Not very important

18. Do you have any unfilled volunteer positions in the drug/alcohol area for which you could use additional RSVP volunteers? CHECK ONE RESPONSE CODE

- \_\_\_ 1=Yes
- \_\_\_ 2=No → Skip to question 19

19. How many additional RSVP volunteers could you use?

\_\_\_\_\_ RSVP Volunteers

20. Do you have any additional comments on any of the issues we asked about?

In case we need to contact you about this questionnaire, please provide us with your name, address, telephone number, and best time to call.

- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Telephone: \_\_\_\_\_
- d. Best Time to Call: \_\_\_\_\_

Thank you for your help. Please return this questionnaire to: Harvey Zelon, Research Triangle Institute, PO Box 12194, Research Triangle Park, NC 27709

**In-Depth Volunteer Supervisor Survey Questionnaire**

Please answer the following questions in regard to the RSVP volunteers you have working in the area of drug and alcohol abuse.

**Volunteer Characteristics**

- 1. How would you characterize the RSVP volunteers working for you?
- 2. Do you think older volunteers work well with (your agency's target population: example, children and

teenagers)? Do you think older volunteers could work well with other populations? If yes, please describe.

3. Have you worked with RSVP volunteers you consider outstanding? How would you describe this (these) person(s)? Why do you think they are particularly successful?

**Management Issues**

4. Have RSVP volunteers affected the management requirements for you or your staff in any way? If so, how?

5. Are there special training needs of RSVP volunteers in comparison to other volunteers? If so, can you describe the differences?

6. Have you encountered any problems in the following situations with RSVP volunteers?

- In the volunteers' interactions with other staff
- In the volunteers' relationship with supervisors
- In your relationship with the project director
- In the volunteers' ability to perform the tasks asked of him/them
- In the volunteers' willingness to perform the task required

7. Have you experienced any obstacles in using older volunteers in your program? If yes, please describe what they were.

8. (If any obstacles) what have you done to overcome these obstacles? Did it succeed?

9. From your experience, in what activities are RSVP volunteers most effective?

10. Are there other activities you would like to see the RSVP volunteers perform within your agency? If yes, please describe these tasks. If there are tasks they aren't performing, what would need to be done to change this?

11. What aspect of your program's involvement with older volunteers are you most proud of?

12. How would you characterize your organization's management style with older volunteers?

**Program Planning**

13. What would you tell another organization about older volunteers?

14. What should RSVP's role be in the assignment and retention of volunteers in your agency?

15. What can RSVP do to improve the use of their volunteers for your organization?

16. Can you give an example of a particular situation in which a volunteer was crucial to the care/contact with a client?

[FR Doc. 91-2472 Filed 2-1-91; 8:45 am]

BILLING CODE 6050-28-M

**DEPARTMENT OF COMMERCE**

**Agency Information Collection Under Review by the Office of Management and Budget (OMB); Expedited Review**

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the National Oceanic and Atmospheric Administration of DOC.

Title: Northwest Region and Alaska Region Family Logbook of Forms.

Form Number: Agency—N/A; OMB—0648-0213.

Type of Request: Revision—Expedited Review.

Burden: No new respondents (393); 809 new burden hours—Average minutes per response, 10 minutes per response for new requirements. Overall burden for the collection is 18,752 hours—Average hours for reporting requirements—.174; 8 hours recordkeeping for 1,836 persons.

**Needs and Uses:** This collection will augment the fishery information collected from up to 260 individual groundfish processors to provide fishery managers with adequate information to base in season management decisions on groundfish resources. Without the new information, the National Marine Fisheries Service is unable to effectively monitor groundfish and prohibited species quotas.

**Affected Public:** Businesses or other for profit, small businesses or organizations.

**Frequency:** On occasion, weekly, monthly, biennially, daily.  
**Respondent's Obligation:** Mandatory.  
**OMB Desk Officer:** Ron Minsk, 395-3084.

Copies of the logbook requirements are published below. Any questions can be directed to Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments for the proposed information collection requirements

should be sent to Ron Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503. He would also welcome telephone calls. His number is (202) 377-3084.

Dated: January 28, 1990.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

**BILLING CODE 3510-22-M**













ALASKA GROUND FISH  
CHECK-OUT NOTICE  
SHORESIDE PROCESSOR

## Send to:

National Marine Fisheries Service  
P.O. Box 21668, Juneau, Alaska 99802  
Telex: RCA 45-377 NMFS AKR JNU  
FAX: 907-586-7131  
Phone: 907-586-7229

Representative

FAX/Telex No:

Phone No:

Shoreside Processor Name

ADF&amp;G PROCESSOR CODE

DATE

ENTER DATE FACILITY CEASED TO RECEIVE GROUND FISH

OMB Control No. 0648-0213

Expiration date: 12-31-91

[FR Doc. 91-2452 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-C

**International Trade Administration**

[C-533-802]

**Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rope from India**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in India of steel wire rope ("wire rope"), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 31.80 percent *ad valorem* for all manufacturers, producers, or exporters in India of wire rope.

We are directing the U.S. Customs Service to suspend liquidation of all entries of wire rope from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of this product in an amount equal to the estimated net subsidy.

If this investigation proceeds as expected, we will make a final determination on or before April 15, 1991.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Roy A. Malmrose or Paulo Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 at (202) 377-5414 or (202) 377-5050, respectively

**SUPPLEMENTARY INFORMATION:****Preliminary Determination**

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in India of wire rope. We preliminarily determine that the following programs confer subsidies:

- International Price Reimbursement Scheme (IPRS)
- Pre-Shipment Export Loans (Export Packing Credit)
- Post-Shipment Financing
- Import Duty Exemptions Available through Advance Licenses
- Sale of an Additional License

We preliminarily determine the estimated net subsidy to be 31.80

percent *ad valorem* for all manufacturers, producers, or exporters in India of wire rope.

**Case History**

Since the publication of the Notice of Initiation in the Federal Register (55 FR 50731, December 10, 1990), the following events have occurred. On December 7, 1990, we presented a questionnaire to the Government of India in Washington, DC, concerning petitioners' allegations. In response to requests from the responding companies and the Government of India, on December 24, and 28, 1990, respectively, the due date for the questionnaire responses was extended until January 15, 1991. On December 27, 1990, the responding companies filed a letter requesting an extension of the preliminary determination on the grounds that the case is extraordinarily complicated. On January 2, 1991, we notified respondents that pursuant to section 703(c)(1)(B) of the Act, the Department did not find sufficient reason to postpone the preliminary determination in this investigation. On January 3, 1991, the U.S. International Trade Commission preliminarily found that imports of wire rope from India materially injure, or threaten material injury to, a U.S. industry (56 FR 286). On January 15, 1991, we received responses from the Engineering Export Promotion Council (EEPC), on behalf of the Government of India, and two manufacturers: Usha Martin Industries Limited (UMIL) and Bombay Wire Ropes (BWR) Ltd. The responses indicated that exports had been made to the United States through certain trading companies. However, responses were received from only the two above-mentioned manufacturers. While the responses indicate that these two manufacturers account for well over a majority of total exports by volume to the United States, their combined export volumes do not account for 100 percent of exports to the United States. The Department intends to solicit additional information, prior to verification, from those companies which account for the remaining portion of wire rope exports to the United States.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Steel wire rope is currently provided for in subheadings 7312.10.60, 7312.10.9030, 7312.10.9060, and 7312.10.9090, of the *Harmonized Tariff Schedule* (HTS). The HTS

subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**Analysis of Programs**

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is April 1, 1989, through March 31, 1990, which corresponds to the most recently completed fiscal year of the respondent companies.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based on our analysis of the responses to our questionnaire, we preliminarily determine the following:

**I. Programs Preliminarily Found to Confer Subsidies**

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in India of wire rope under the following programs:

**A. International Price Reimbursement Scheme (IPRS)**

On February 9, 1981, the Government of India introduced the IPRS for exporters of products with steel inputs.

The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On January 10, 1985, and June 2, 1988, the Government of India extended the IPRS to include stainless wire rod and high carbon steel wire rod, respectively. Wire rod is the primary input into wire rope. According to the questionnaire responses, the price of wire rod in India is not controlled. Eligibility for IPRS rebates is restricted to wire rope inputs purchased domestically.

The EEPC, a non-profit organization funded by the Government of India and private firms, processes the claims for, and disburses, the IPRS rebate. The IPRS rebate is based on (1) the differential between the domestic and international prices of steel wire rod and (2) the actual wire rod consumption,

inclusive of a maximum ten percent allowance for waste. The domestic price of wire rod is based on a calculated average of domestic producers' prices. The international price of wire rod is derived from international prices of an upstream steel product. During the review period both wire rope manufacturers covered by this investigation received IPRS rebates on exports of wire rope to the United States.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5)(A) of the Act. Therefore, we preliminarily determine the IPRS program to confer a countervailable export subsidy. We consider the benefit to be the entire IPRS rebate with an adjustment for administrative costs in the form of banking charges.

Respondents reported IPRS rebates received during the review period on exports of the subject merchandise to the United States. To calculate the benefit for each company, we divided the amount of rebates received by the value of respondents' exports of the subject merchandise to the United States. We then weighted each company's benefit by its share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from this program to be 29.17 percent *ad valorem* for all manufacturers and exporters in India of wire rope.

#### *B. Pre-Shipment Export Loans (Export Packing Credit)*

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credits to exporters under the Pre-Shipment and Post-Shipment Credit Scheme. Pre-shipment financing provides working capital to manufacturers/exporters for the purchase of raw materials and packing materials based on presentation of a confirmed order or letter of credit. Typically, 90 percent of the value of the purchase order is eligible for pre-shipment financing, although no provision exists restricting such financing for the remaining 10 percent of the order value.

In general, pre-shipment loans are granted for a period of 180 days. During the review period, the interest rate under this program was 7.5 percent for goods shipped within the first 180 days. A manufacturer/exporter can apply for an extension of up to 90 days. If approved, the manufacturer/exporter is charged 9.5 percent interest during the

90 day extension period. In the event that a manufacturer/exporter does not ship until after the 270th day, it will be charged 7.5 percent for the first 180 days, 9.5 percent for the next 90 days, and its "regular" interest rate for the remainder of the loan. Interest on these loans is paid quarterly or at the date of repayment. Because only exporters are eligible for these pre-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

According to the responses, the benchmark interest rate at which short-term commercial loans were available in India during the review period was 16.0 percent. Comparing the benchmark interest rate to the rate charged under this program, we find that the rate on the pre-shipment loans is preferential. Therefore, we determine this program to be countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984); see also, *Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT, 1985).

Accordingly, we compared the amount of interest paid on those loans related to sales of wire rope to the United States during the review period to the amount that would have been paid at the benchmark rate. For each company, we divided the difference by its total exports of the subject merchandise to the United States. We then weighted each company's benefit by its share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from this program to be 1.78 percent for all manufacturers and exporters in India of wire rope.

#### *C. Post-Shipment Financing*

The Reserve Bank of India, through commercial banks, provides post-shipment financing under the Pre-Shipment and Post-Shipment Credit Scheme. Post-shipment financing provides working capital to manufacturers/exporters for the interim period between shipment of goods and receipt of payment. Post-shipment financing is available to manufacturers/exporters upon presentation of a confirmed order or letter of credit subsequent to shipment of the goods. The terms of post-shipment financing with respect to the due date are those

stated in the purchase order/contract. The due date may in no case exceed 180 days. During the review period, the interest rate under this program was 8.65 percent. Interest on these loans is mainly paid up front at the time of the discount. Because only exporters are eligible for these post-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

According to the responses, the benchmark interest rate at which short-term commercial loans were available in India during the review period was 16.0 percent. Comparing the benchmark interest rate to the rate charged under this program, we find that the rate on the post-shipment loans is preferential. Therefore, we determine this program to be countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix* attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984); see also, *Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT, 1985).

Accordingly, we compared the amount of interest paid on those loans related to sales of wire rope to the United States during the review period to the amount that would have been paid at the benchmark rate. For each company, we divided the difference by its total exports of the subject merchandise to the United States. We then weighted each company's benefit by its share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from this program to be 0.71 percent for all manufacturers and exporters in India of wire rope.

#### *D. Import Duty Exemptions Available Through Advance Licenses*

Advance licenses are only available to exporters and provide an import duty exemption on inputs of raw materials used in the production of exports. In its response, UMIL stated that it has used four advance licenses to import raw materials used in the production of wire rope and other non-subject merchandise. Because this program is limited to exporters, any import duty exemption provided on imported products not physically incorporated into an exported product constitutes a countervailable export subsidy. According to the response, the only material imported or

UMIL under an advance license which was not physically incorporated into an exported product was soap. Therefore, we consider the duty-savings attributable to imports of soap a countervailable export subsidy.

To calculate the benefit, we divided the total duty-savings by UMIL's total exports to all markets. We then weighted this rate by UMIL's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from the use of this license to be 0.13 percent of all manufacturers and exporters in India of wire rope.

#### E. Sale of an Additional License

Additional Licenses are transferable licenses available to Export/Trading Houses based on a percentage of the annual FOB value of exports. Imports under these licenses are subject to customs duties and need not necessarily be used in the production of goods for export. In its response, UMIL indicated that it sold one Additional License during the review period.

Because exporters receive these licenses based on their status as an exporter, we consider the proceeds resulting from sales of these licenses a countervailable export subsidy. To calculate the benefit, we divided the amount UMIL received on selling the license by its total exports to all markets. We then weighted this rate by UMIL's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the net subsidy from the sale of this license to be 0.01 percent for all manufacturers and exporters in India of wire rope.

#### II. Program Preliminarily Found Not to Confer Subsidies

##### Cash Compensatory Support (CCS) Program

In 1966, the Government of India established the CCS program as a mechanism by which to rebate indirect taxes on exported merchandise. The rebate for exports of wire rope was set at a maximum of 10 percent for the review period, and is paid as a percentage of the FOB invoice price. This rate was based on the results of a 1989 audited survey of domestic wire rope manufacturers administered by the Ministry of Commerce (MOC) and the EEPC. This survey, which is updated every three years, covered wire rope manufacturers whose cumulative production levels approximate 80 percent of total exports.

To determine whether an indirect tax rebate system confers a subsidy, we must apply the following analysis. (See,

*Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel from Indonesia*, 49 FR 49672, December 21, 1984). First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a subsidy if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. Based on the information provided in the responses and the Department's previous examination of the CCS program (See, for example, *Certain Iron Metal Castings From India: Final Results of Countervailing Duty Administrative Review* 55 FR 1976, January 18, 1991), we preliminarily determine that the CCS rebate meets all the above-mentioned criteria. In the present investigation, we will verify whether rebates under this program continue to reasonably reflect the incidence of indirect taxes on inputs.

We preliminarily consider wire rod, zinc, lead, fiber cores, lubricants, and packing materials to be raw material inputs that are physically incorporated into the subject merchandise. In determining the extent to which the rebate exceeded the tax incidence on the items physically incorporated into the exported product for each company, we compared the rebate rate provided in the response to the indirect taxes on items physically incorporated as a percentage of the total FOB value of exports of the subject merchandise. The calculation for both companies yields tax incidence rates greater than 10 percent. On this basis, we preliminarily determine that the CCS program

provides no overrebate and, therefore, is not countervailable.

#### III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in India of wire rope during the review period:

##### A. Use or Sale of Import Replenishment Licenses

Import Replenishment Licenses permitting the import of merchandise are issued to exporters based on a ratio of the FOB prices of previous export sales. Imports under these licenses are subject to value limits and customs duties, but need not necessarily be used in production for export.

##### B. Income Tax Deductions Available Under 8 OHHC

Section 8 OHHC of the Finance Act of 1930 provides exporters with an income tax deduction calculated by multiplying the exporters' profits from the sale of goods by the ratio of export sales to total sales.

##### C. Development Assistance (MDA)

The Federation of Indian Export Organizations administers and the Ministry of Commerce approves all MDA grants. The purpose of the program is to provide grants-in-aid to approved organizations (*i.e.*, export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions.

#### IV. Programs for Which Additional Information is Needed

Based on our analysis of the questionnaire responses, we have determined that additional information is required for the following programs before a determination can be made with respect to whether or not they confer subsidies.

##### A. Import Duty Exemptions Available to 100 Percent Export-Oriented Units (EOU)

Designated status as an EOU permits an exporter to import raw materials as well as machinery and equipment duty-free. These imported materials must be entirely incorporated into the exported product. The responses indicate that UMIL may have benefited from its status as an EOU through (1) the domestic sale of final products for which inputs were imported duty-free, (2) the

duty-free importation of certain inputs that were not physically incorporated into exported merchandise, or (3) the duty-free importation of machinery and equipment during the review period. We have preliminarily determined that additional information on this program is needed.

#### B. Sick Industrial Companies Act

The responses describe assistance available under the Sick Industrial Companies Act, enacted in January 1986. Although this program was not included in the petition or our initiation, the responses explain that it can provide a rehabilitation package to companies designated as "sick or potentially sick" by the Board for Industrial and Financial Reconstruction. The EEPC response states BWR was designated a sick company in July 1988 and provides a copy of the rehabilitation package created for it. Although the narrative portion of the questionnaire response states that this program is not specific within the meaning of section 771(5)(A) of the Act, the law establishing the program states that assistance is limited to "scheduled" industries. Therefore, we will solicit further information concerning the specificity of assistance provided under the Sick Industrial Companies Act.

#### C. Use of An Additional License

In its response, UMIL indicated that it used one Additional License during the review period for imports used in the manufacture of subject and non-subject merchandise sold in the domestic and export markets. The details regarding these licenses and identical to those described in the "Sale of An Additional License" section of this notice. Because we lack specific information regarding the administration and value of these licenses, we have preliminarily determined that additional information on this license is needed.

#### Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

#### Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation on all entries of wire rope from India which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* and to require a cash deposit or bond for each such entry of this merchandise equal to 31.80 percent *ad valorem*. This suspension will remain in effect until further notice.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Public Comment

In accordance with 19 CFR 355.38 of the Commerce Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Such a hearing will be held at 10 a.m. on Thursday, April 4, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request within ten days of the publication of this notice in the *Federal Register* to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than March 25, 1991. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 29, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written comments should be submitted in accordance with § 355.38 of the Commerce Department's regulations and

will be considered if received within the time limits specified in this notice.

**Authority:** This determination is published pursuant to sec. 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 29, 1991.

**Eric I. Garfinkel,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 91-2556 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-806]

#### Preliminary Negative Countervailing Duty Determination; Steel Wire Rope from Thailand

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that benefits are being provided to manufacturers, producers, or exporters in Thailand of steel wire rope ("wire rope") as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.40 percent *ad valorem*. Since this rate is *de minimis*, our preliminary countervailing duty determination is negative.

If this investigation proceeds normally, we will make a final determination on or before April 15, 1991.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-0167.

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

Based on our investigation, we preliminarily determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Thailand of wire rope. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Short-Term Provided under the Export Packing Credits Program
- Tax Certificates for Exports
- Electricity Discount for Exporters

The estimated net bounty or grant is 0.40 percent *ad valorem*. Since the countervailable benefits are *de minimis*, our preliminary countervailing duty determination is negative.

### Case History

Since publication of the Notice of Initiation in the *Federal Register* (55 FR 50734, December 10, 1990), the following events have occurred. On December 7, 1990, we presented a questionnaire to the Government of Thailand (GOT) in Washington, DC, concerning petitioner's allegations. On January 14, 1991, after granting an extension, we received responses from the GOT and from two respondent companies, Usha Siam Steel Industries Limited (Usha Siam) and Vivat Steel Wire Rope (1979) Company Limited (Vivat). On January 23, 1991, we issued a supplemental/deficiency questionnaire to the GOT and the respondent companies. Responses to the supplemental questionnaire are due no later than February 1, 1991.

### Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Steel wire rope is currently provided for in subheadings 7312.10.60, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

### Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1989, which corresponds to the fiscal year of the respondent companies. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

### I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of wire rope under the following programs:

#### A. Short-Term Loans Provided Under the Export Packing Credits Program

Export packing credits (EPCs) are short-term loans used for either pre-shipment or post-shipment financing. Exporters apply to commercial banks for EPCs. The commercial banks, in turn, must submit an application for approval to the Bank of Thailand (BOT). Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B. E. 2526), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt.

The BOT charges an interest rate of five percent per annum to commercial banks on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial banks are permitted to charge exporters no more than seven percent per annum for the purchase of such notes.

On the due date of the loan, the BOT debits the commercial bank's account for the principal amount and the interest charged the commercial bank. If the terms of the loan are not met, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan.

Similarly, on the due date of the loan, the commercial bank debits the exporter's account for the principal amount and the maximum of seven percent interest charged the exporter. If the exporter has not met the terms of the loan, the commercial bank passes on the penalty charge over the term of the loan.

The penalty is refunded to the commercial bank by the BOT and by the commercial bank to the exporter, if the company can prove shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans). Otherwise, the penalty is not refunded. The purpose of the penalty

charge is to ensure that companies take out EPC loans only to finance actual export sales.

On October 1, 1988, the GOT issued new regulations that coexisted with the prior regulations until December 31, 1988. On January 1, 1989, the new regulations completely replaced the former ones. Until January 1, 1989, exporters could still receive EPC loans under the terms of the program described above. Under the new regulations, the maximum rate commercial banks can charge exporters was raised from seven to ten percent. In addition, the BOT now discounts only up to 50 percent of the loan amount, whereas under the previous program the BOT could discount the full value of the loan.

According to the responses, Usha Siam received EPC loans on which interest was paid during the review period. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

As the benchmark for short-term loans, it is our practice to use the predominant form of short-term financing or a national weighted-average commercial interest rate. In the absence of a predominant form of short-term financing in the Thai economy, we are using the weighted-average interest rate charged by commercial banks on domestic loans, bills and overdrafts during 1989, and, where loans were issued in 1988, the weighted-average interest rate of the same composition for 1988. This is the benchmark that we have applied in all previous Thai cases, most recently in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand* (55 FR 1695, January 18, 1990) (*Pipe Fittings*).

Comparing the weighted-average interest rates for 1988 and 1989, as reported in the GOT response, to the rate charged on EPCs, as reported in the company responses, we find that the rate on EPCs is preferential and, therefore, confers a bounty or grant on exports of wire rope. According to the responses, only Usha Siam received benefits under this program during the review period.

To calculate the benefit from the EPC loans on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations (see, for example, *Pipe Fittings*; and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic*

*Tile from Mexico* (53 FR 15290, April 28, 1988) and which is described in more detail under § 355.44(b)(3) of "Countervailing Duty Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989); see also, *Alhambra Foundry versus United States*, 626 F. Supp. 402 (CIT, 1985).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because the responses specified which EPC loans were tied to exports to the United States, we calculated the amount of interest that Usha Siam would have been paid on such loans at the benchmark rate and subtracted the amount of interest that the company actually paid. We then weighted the benefits received by Usha Siam by its share of exports to the United States. On this basis we preliminarily determined the net subsidy from this program to be 0.074 percent *ad valorem* for all manufacturers and exporters in Thailand of wire rope.

#### B. Tax Certificates for Exports

The GOT issues to exporters tax certificates which are freely transferable and which constitute a rebate of indirect taxes and import duties on inputs used to produce exports. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an Input/Output (I/O) study published in 1980, based on 1975 data, and updated in 1985 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) used in a discrete range of sector-specific products at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's customs duty drawback program or duty exemption program on imported raw materials, or when firms do not use imported materials in their production process. New rebate rates, announced on February 5, 1986, were computed using the study published in 1985. Since 1986, the "A" rate applicable to exports of wire rope has been 7.19 percent and the "B" rate has been 0.59 percent. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to

determine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay various tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

According to the responses, both Usha Siam and Vivat received tax certificates during the review period at the "B" rate.

To determine whether an indirect tax rebate system confers an overrebate and, therefore, a bounty or grant, we must apply the following analysis. (See, for example, *Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel from Indonesia*, 49 FR 49672 (December 21, 1984.) First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of a sample from the I/O study used by the Government to quantify the rebate. We analyze the documentation supporting the study to determine the accuracy of the sample on input coefficients, the import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine whether the rebate amount reasonably reflects the amount of duty and indirect taxes paid.

When the study upon which the indirect tax and import duty rebate system is based is shown to bear a reasonable relation to the actual indirect tax incidence, the Department will consider that the system does not confer a bounty or grant unless the fixed amount set forth in the rebate schedule for the exported product exceeds the amount of duties and indirect taxes paid on physically incorporated inputs. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a bounty or grant exists to the extent that the fixed rebate remits duties and indirect taxes on non-physically incorporated inputs.

In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand* (50 FR 9818, 9820, March 12, 1985), we examined

Thailand's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. However, to the extent that the program rebates indirect taxes and import duties on non-physically incorporated inputs, we found that the remissions are excessive. In subsequent investigations involving products from Thailand, the most recent of which was *Pipe Fittings*, we undertook the analysis described above and reiterated that export tax certificate rebates are countervailable only to the extent that the remissions are excessive. In the present investigation, we will verify whether rebates under this program continue to reasonably reflect the incidence of indirect taxes and import duties on inputs.

For purposes of our preliminary determination, to determine whether, and the extent to which, the tax certificates confer an excessive remission of indirect taxes, we calculated the indirect taxes paid on physically incorporated inputs according to the most recent I/O table. We divided the tax incidence on all items physically incorporated into all products classified in the other fabricated metal products sector by the FOB-adjusted value of all domestically produced finished goods in the secondary steel sector. We then compared the authorized rebate rate of 0.59 percent, which is based on both physically and non-physically incorporated inputs, to the allowable rebate rate and found that there is an excessive remission of indirect taxes to exporters of wire rope. The difference between the two rebate rates equals the net overrebate. On this basis, we calculated an estimated net bounty or grant of 0.15 percent *ad valorem*.

#### C. Electricity Discounts for Exporters

The Electricity Generating Authority of Thailand, the Metropolitan Electricity Authority, and the Provincial Electricity Authority provide discounts on electricity rates charged to producers of export products. According to the responses, this program provides discounts of 20 percent of the cost of electricity consumed to produce exports. Any producer that consumes electricity in manufacturing products that are eligible to receive tax certificates for exports is eligible for the electricity discount. Once a producer has qualified for the electricity discount and has completed an export transaction involving eligible products, it may apply to the electricity authority from which it

receives its electricity bill. The authority then calculates the amount of the discount and credits a deduction on a subsequent electricity bill. According to the responses, Usha Siam received benefits under this program during the review period.

Since these benefits were contingent on export, we divided the total amount of the discounts received by Usha Siam by that company's total exports. We then weighed the benefit received by Usha Siam by its share of exports of the subject merchandise to the United States. On this basis we preliminarily determined the net subsidy from this program to be 0.171 percent *ad valorem* for all manufacturers and exporters in Thailand of wire rope.

According to the responses, effective January 1, 1990, the GOT eliminated entirely the electricity rebate for exporters. The law terminating the program was issued on January 16, 1990.

## II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Thailand of wire rope during the review period:

### A. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act

The Investment Promotion Act (IPA) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the IPA authorizes, among other incentives, the exemption from import duties and certain taxes with respect to qualifying projects. Section 28 provides for exemption from payment of import duties and business taxes on machinery.

### B. Rediscount of Industrial Bills

The BOT authorizes rediscounts for short-term promissory notes arising from industrial activity. The BOT's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases. Commercial banks may charge their industrial customers a maximum of seven percent per annum, while the rate charged to commercial banks by the BOT is five percent per annum.

### C. International Trade Promotion Fund

This fund is used to finance export promotion activities, such as marketing research and trade fairs.

### D. Export Processing Zones

Under the Industrial Estates Authority of Thailand Act, firms located in designated export processing zones and industrial estates receive tax and import duty exemptions on: (1) Machinery used for factory construction and operation; (2) goods imported for use in the production of exports; (3) items produced for export; and (4) items imported for re-export.

### E. Additional Incentives Under the IPA

- Section 31 of the IPA provides a three-to-eight year exemption from payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period.

- Section 33 of the IPA provides a five-year tax exemption for goodwill and royalty payments.

- Section 34 provides an additional deduction from taxable income for dividends paid on promoted activities.

- Section 36(1) authorizes exemptions from import duties and business taxes on "raw and necessary materials".

- Section 36(2) provides an exemption from import duties and business taxes on items imported for re-export.

- Section 36(3) provides an exemption from export duties and business taxes on products produced or assembled by promoted firms.

- Section 36(4) provides a deduction from assessable income of an amount equal to five percent of the increased income over the previous year derived from exports.

### Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

### Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on April 2, 1991, at 10:30 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the *Federal Register* to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone

number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs or other written comments must be submitted to the Assistant Secretary no later than March 25, 1991. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 30, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with § 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

Authority: This determination is published pursuant to sec. 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 29, 1991.

Eric I. Garfinkel,  
Assistant Secretary for Import  
Administration.

[FR Doc. 91-2557 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DS-M

## Short Supply Review; Certain Continuous Cast Steel Slabs

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply review and request for comments; certain continuous cast steel slabs.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 108,000 net tons of certain continuous cast steel slabs for the second quarter of 1991 under Article 8 of the U.S.-Brazil and U.S.-EC steel arrangements and Paragraph 8 of the U.S.-Mexico steel arrangement.

**SHORT-SUPPLY REVIEW NUMBER:** 39.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby

announces that a short-supply determination is under review with respect to certain continuous cast steel slabs for use in the manufacture of American Petroleum Institute (API) X-70 line pipe. On January 29, 1991, the Secretary received an adequate petition from Oregon Steel Mills ("Oregon Steel") requesting a short-supply allowance for 108,000 net tons of the requested material for the second quarter of 1991 under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement"), Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-EC arrangement") and Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement").

Oregon Steel alleges that it will experience short supply for this product in the second quarter of 1991 because it has recently obtained several 1991 contracts for large pipeline projects, which will more than double its slab requirements from 1990. Oregon Steel states that it has limitations on the quantity of this material it can supply from its Portland, Oregon facility, and that domestic producers either have no available capacity or are unable to meet Oregon Steel's specifications. Oregon Steel also states that it will be able to purchase some quantity of slabs under regular export licenses, but must obtain the remainder of the tonnage needed under a short-supply allowance.

The requested material meets the following specifications:

**Dimensions:**

Gauge: 200 mm-230 mm\*  
Width: 1700 mm-1800 mm  
Length: 7300 mm-7620 mm

**Tolerances:**

Gauge:  $\pm 4$  mm  
Width:  $\pm 10$  mm  
Length:  $\pm 50$  mm  
Camber: 0.67% max.  
Crossbow: 10 mm max.  
Squareness:  $90 \pm 3$

\*Oregon Steel prefers slabs ranging from 200 mm-230 mm in gauge, but can roll slabs ranging up to 260 mm.

**Chemical Composition:**

C—0.07% to 0.11%  
Mn—1.35% to 1.55%  
P—0.015% max.  
S—0.007% max.\*  
Si—0.15% to 0.30%

Cb—0.025% to 0.150%  
V—0.020% max.  
Ti—0.005% max.  
Al—0.020% to 0.050%  
Cu—0.25% max.  
Ni—0.15% max.  
Cr—0.15% max.  
Mo—0.05% max.  
Sn—0.008% max.  
Ca—\*\*  
N—0.008% max.  
Al/N ratio > 4.0

\* Prefer 0.002% maximum sulfur  
\*\* Liquid steel to be calcium treated for inclusion shape control.

Section 4(b)(4)(B)(ii) of the Act and section 357.016(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 28, 1991.

**COMMENTS:** Interested parties wishing to comment upon this review must send written comments not later than February 11, 1991, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after February 11, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply

determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

**FOR FURTHER INFORMATION CONTACT:** Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202) 377-1390 or (202) 377-0159.

Dated: January 30, 1991.

Eric I. Garfinkel,  
Assistant Secretary for Import  
Administration.

[FR Doc. 91-2839 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[Secretariat File No. USA-89-1904-11]

**United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Panel**

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of panel in binational panel review of the affirmative determination of threat of material injury made on remand by the U.S. International Trade Commission (Commission), on October 23, 1990, respecting fresh, chilled or frozen pork from Canada.

**SUMMARY:** By a decision dated January 22, 1991, the Binational Panel remanded to the Commission for reconsideration the Commission's Determination on Remand filed on October 23, 1990, that the United States pork industry was threatened with material injury by reason of imports of pork from Canada. A copy of the complete Panel decision is available from the FTA Binational Secretariat.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace

domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the *Federal Register* on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the *Federal Register* on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

#### Background

On September 13, 1989, the Commission issued its final affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada. Requests for Panel Review were filed by the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd., the Canadian Meat Council and its Members and Canada Packers, Inc., the Government of the Province of Alberta and the Gouvernement du Quebec.

On August 24, 1990, the Panel remanded the Commission's final determination for reconsideration because the Panel found that the Commission relied heavily throughout on statistics which the Panel found questionable and which they found colored the Commission's assessment of much of the other evidence. The Panel instructed the Commission to reconsider the evidence on the record, and more particularly the figures on Canadian pork production. The Commission was given 60 days (until October 23, 1990) to take action consistent with the Panel's decision.

On October 23, 1990, the Commission issued its Determination on Remand, again finding that the United States pork industry was threatened with material injury by reason of imports of pork from Canada.

On October 26, 1990, a Motion for Panel Review of the Commission's Determination on Remand was filed by the Complainants pursuant to Rule 75,

which motion was granted by the Panel on November 5, 1990. The Commission and the National Pork Producers' Council filed briefs in support of the Commission's Determination on Remand while the Complainants presented briefs contesting the Commission's findings on remand.

#### Panel Decision

On January 22, 1991, the Panel issued its Decision on Remand pursuant to Rule 75(5). The Panel found that the Commission committed an error of law because it exceeded the scope of its own Notice when reopening the administrative record on remand. The Panel further found that the Commission's findings of a threat of imminent material injury were not supported by substantial evidence. For these reasons, the Panel again remanded the Commission's Determination on Remand for action not inconsistent with the Panel's Decision of August 24, 1990, and not inconsistent with the Panel's decision in this panel review of the Commission's Determination on Remand.

The results of this further remand was ordered to be provided by the Commission to the Panel within 21 days of the date of this decision (by not later than February 12, 1991).

Dated: January 28, 1991.

James R. Holbein,

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91-2532 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DT-M

[Secretariat File No. USA-90-1904-02]

#### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of completion of panel review of the final determination clarifying the scope of antidumping and countervailing duty orders—abolishment of end use certification procedure—made by the Department of Commerce, International Trade Administration, Import Administration, respecting Oil Country Tubular Goods from Canada.

**SUMMARY:** Pursuant to Rules 73(2) and 80(1)(a) of the *Article 1904 Panel Rules* ("Rules"), the Panel Review of the final determination described above was

completed on January 23, 1991, the date following the filing of a consent motion to terminate the binational panel review of this matter. The panelists were discharged from their duties effective the same date.

#### FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

**SUPPLEMENTARY INFORMATION:** On November 5, 1990, Stelco, Inc., filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Determination Clarifying Scope of Antidumping and Countervailing Duty Orders—Abolishment of End Use Certification Procedure—respecting Oil Country Tubular Goods from Canada made by the International Trade Administration, Import Administration, Import Administration File Numbers A-122-506 and C-122-505. The Binational Secretariat assigned Case Number USA-90-1904-02 to this Request.

On January 22, 1991, Stelco, Inc. filed a Notice of Consent Motion Requesting Termination of Panel Review with an accompanying affidavit indicating the consent of all participants to the motion. The Notice of Consent Motion indicated that the motion was filed because the original request for panel review was filed after the deadline established by Article 1904(4) of the United States-Canada Free-Trade Agreement.

Rule 73(2) provides that "where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, \* \* \* the panel review is terminated and, if a panel has been appointed, the panelists are discharged." Rule 80(1)(a) provides that the termination shall be effective on the day after the day on which the affidavit is filed. Pursuant to the authorities cited above, this Notice of Completion of Panel Review was effective and the panelists were discharged from their duties on January 23, 1991.

Dated: January 28, 1991.

James R. Holbein,

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 91-2533 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-GT-M

### National Oceanic and Atmospheric Administration

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The salmon management advisory bodies of the Pacific Fishery Management Council (Council) will hold a public meeting to make an initial assessment of the ocean salmon fishing season, on February 21, 1991, at 10: a.m.

The public meeting will be held at the Red Lion Inn-Jantzen Beach, 909 North Hayden Island Drive, Portland, OR. Participants will include the Council's Salmon Advisory Subpanel (SAS), Salmon Technical Team (STT), Salmon Subcommittee of the Scientific and Statistical Committee (SSC), and policy representatives from state, tribal and Federal fishery management entities.

The meeting is intended to provide the SAS members with an initial assessment of salmon stock abundance, and discussion of management entity concerns and recommendations for the 1991 ocean salmon fishing season. This information will assist SAS members in drafting proposed fishing season options for presentation to the Pacific Council at the Council's March 12, 1991, meeting in San Francisco, CA. Public and written statements pertaining to salmon abundance projections and planning for the 1991 ocean salmon season will be accepted at appropriate times during the meeting of the advisory bodies.

For more information contact John Coon, Staff Officer (salmon), Pacific Fishery Management Council, suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 28, 1991.

David S. Crestin,

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91-2496 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

#### Pacific Fishery Management Council, Amended Meeting Date and Location

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The date and location of a public meeting of the Pacific Fishery Management Council's (Council) Salmon Subcommittee (under the Council's Scientific and Statistical Committee), previously scheduled on January 29, 1991, and notices of which were both previously published at 56 FR 1520 (January 15, 1991), have been changed. The Salmon Subcommittee now will

meet on February 22, 1991, at the Red Lion Inn—Jantzen Beach, Portland, OR. The agenda for the meeting is not changed; The Salmon Subcommittee will review the development of a model to estimate fishery impacts on chinook salmon stocks north of Cape Falcon, OR.

The Council's Salmon Technical Committee (STT) public meeting, previously scheduled to begin on January 28, 1991, at 10 a.m., and continue through February 1, 1991, at the Council's office, 2000 SW First Avenue, Metro Center, Conference Room 440, Portland, OR, to draft a review of 1990 ocean salmon fisheries, remains unchanged.

For more information contact John C. Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 29, 1991.

David S. Crestin,

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91-2496 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce

The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a public meeting on February 11-15, 1991, at the Council's office (address below).

The STT will begin its meeting on February 11 at 1 p.m., to draft the 1991 stock status report for presentation to the Council at its March meeting.

Public and written statements pertaining to salmon abundance projections will be accepted at appropriate times during the STT's meeting.

For more information contact John Coon, Staff Officer (salmon), Pacific Fishery Management Council, suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 28, 1991.

David S. Crestin,

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91-2499 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on February 11-13, 1991, at the Southwest Fisheries Center, National Marine Fisheries Service, conference room, 3150 Paradise Drive, Tiburon, CA. The GMT will begin its meeting on February 11 at 1 p.m., and will adjourn on February 13 at 12 noon.

The GMT will discuss development of a comprehensive observer program for the entire groundfish fleet, a proposed change in the minimum trawl net mesh size, an analysis of anticipated impacts of a proposal to allocate Pacific whiting between shore-based and at-sea fish processors, and an analysis of a proposal to allocate black rockfish among gear types in Washington State. The GMT also will prepare recommendations to the Pacific Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 28, 1991.

David S. Crestin,

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 91-2500 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

#### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) will hold a public meeting of its Snapper-Grouper Committee on February 13-15, 1991, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. On February 13 the Snapper-Grouper Committee will begin meeting at 1 p.m., to review written and public hearing comments received on Amendment #4 of the Snapper-Grouper Fishery Management Plan, and will decide which proposed management measures it will recommend to the Council during its February 25-March 1, 1991, public meeting in Brunswick, GA. Proposed management measures include minimum sizes, gear restrictions, recreational bag

limits, and spawning season/area closures. The meeting will adjourn on February 15 at 12 p.m.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpart Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: January 28, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-2497 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on February 25-March 1, 1991, at the Glynn Mall Suites Hotel, 500 Mall Blvd., Brunswick, GA.

The Council will take final action on Amendment #4 of the Snapper-Grouper Fishery Management Plan, set the wreckfish quota for the 1991-92 season, and discuss wreckfish limited entry, flounder, habitat and other fishery management business. A detailed agenda will be available to the public on or about February 11.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpart Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: January 29, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-2501 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-22-M

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Indonesia

January 29, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** February 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 341 and 369-S are being reduced for carryforward use.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25860, published on June 25, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

January 29, 1991.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on February 6, 1991, you are directed to reduce the limits established in the directive of June 19, 1990 for cotton textile products in the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia:

| Category           | Adjusted 12-Mon. limit <sup>1</sup> |
|--------------------|-------------------------------------|
| Levels in Group I: |                                     |
| 341.....           | 531,756 dozen.                      |
| 369-S *.....       | 530,347 kilograms.                  |

<sup>1</sup> The limits have not been adjusted to account for any imports exported after June 30, 1990.

\* Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-2529 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DR-M

### Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Trinidad and Tobago

January 29, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits and GALs for the new agreement year.

**EFFECTIVE DATE:** February 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Trinidad and Tobago reached agreements, effected by exchange of notes dated November 8, 1990 and December 14, 1990, to amend their current bilateral agreement to extend through December 31, 1991.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish import limits and Guaranteed

Access Levels for the period beginning on January 1, 1991 and extending through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

Requirements for participation in the Special Access Program are available in Federal Register notices 52 FR 28588, published on July 31, 1987; 53 FR 21208, published on June 11, 1988; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

January 29, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986, as amended, between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 6, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Trinidad and Tobago and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991, in excess of the following designated levels:

| Category             | 12-Mo. restraint level <sup>1</sup>  |
|----------------------|--|
| 331/631.....         | 140,000 dozen pairs.   |
| 336/636.....         | 85,000 dozen.  |
| 338/339.....         | 105,000 dozen.   |
| 340/640.....         | 50,000 dozen of which not more than 25,000 dozen shall be in shirts made from yarn dyed fabric of two or more colors in the warp and/or filling in Categories 340-Y/640-Y <sup>2</sup> . |
| 347/348/647/648..... | 100,000 dozen.   |
| 349/649.....         | 105,000 dozen.   |
| 350/651.....         | 70,000 dozen.  |
| 351/651.....         | 70,000 dozen.  |
| 352/652.....         | 100,000 dozen.   |

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1990.

\* Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to the these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Trinidad and Tobago.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported to the United States from Trinidad and Tobago during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991:

| Category             | Guaranteed Access Level |
|----------------------|-------------------------|
| 331/631.....         | 200,000 dozen pairs.    |
| 336/636.....         | 300,000 dozen.          |
| 338/339.....         | 225,000 dozen.          |
| 340/640.....         | 100,000 dozen.          |
| 347/348/647/648..... | 300,000 dozen.          |
| 349/649.....         | 200,000 dozen.          |
| 350/650.....         | 100,000 dozen.          |
| 352/651.....         | 100,000 dozen.          |
| 352/652.....         | 300,000 dozen.          |

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of July 28, 1987 shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-2530 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DR-M

### Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1991 Correlation

January 30, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1991 Correlation.

**EFFECTIVE DATE:** February 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**SUPPLEMENTARY INFORMATION:** The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. The following list includes Harmonized Tariff Schedule numbers that have been published in the Harmonized Tariff Schedule of the United States (1991). The Correlation should be amended to reflect the changes indicated below:

| Category | Changes in the 1991 correlation  |
|----------|--|
| 359..... | Delete 6505.90.1530.<br>Add 6505.90.1525—Knitted cotton visors and other headgear which provides no covering for the crown of the head, other than babies.<br>Add 6505.90.1540—Other knitted visors and headgear, not for babies.<br>Add 6505.90.2545—Not knitted, other than certified hand-loomed and folklore products; visors, and other headgear of cotton which provides no covering for the crown of the head.  |
| 459..... | Delete 6505.90.3060.<br>Add 6505.90.3045—Other than babies, knitted or crocheted wool visors, and other headgear, which provides no covering for the crown of the head.<br>Add 6505.90.3090—Other wool visors, and headgear knitted or crocheted, not for babies.<br>Delete 6505.90.4060.<br>Add 6505.90.4045—Other than babies, visors, and other headgear which provides no covering for the crown of the head, not knitted or crocheted.<br>Add 6505.90.4090—Other woven visors and headgear, not for babies. |

| Category | Changes in the 1991 correlation   |
|----------|---|
| 659..... | <p>Delete 6505.90.5060.</p> <p>Add 6505.90.5045—MMF knitted or crocheted wholly or in part of braid, visors, and other headgear which provides no covering for the head, not for babies.</p> <p>Add 6505.90.5090—Other visors and headgear of mmf knitted or crocheted, wholly or in part of braid, not for babies.</p> <p>Delete 6505.90.6080.</p> <p>6505.90.6045—MMF visors, and other headgear which provides no covering for the crown of the head, not in part of braid, other than containing 23 percent or more by weight of wool or fine animal hair, not for babies.</p> <p>Add 6505.90.6090—Other MMF visors and headgear not in part of braid not containing 23 percent or more by weight of wool or fine animal hair, not for babies.</p> <p>Delete 6505.90.7060.</p> <p>Add 6505.90.7045—MMF visors, and other headgear which provides no covering for the crown of the head, wholly or in part of braid, not for babies.</p> <p>Add 6505.90.7090—Other MMF visors and headgear, wholly or in part of braid, not for babies.</p> <p>Delete 6505.90.8060.</p> <p>Add 6505.90.8050—MMF visors and other headgear which provides no covering for the crown of the head, not for babies, not in part of braid.</p> <p>Add 6505.90.8090—Other MMF visors and headgear, not for babies, not in part of braid.</p> |
| 859..... | <p>Delete 6505.90.2500.</p> <p>Add 6505.90.2590—Silk or non-cotton vegetable fiber headgear, but other than containing 70 percent or more by weight of silk or silk waste.</p>  |

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-2531 Filed 2-1-91; 8:45 am]

BILLING CODE 3510-DR-M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Proposed Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in diammonium phosphate futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the

Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before March 6, 1991.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT diammonium phosphate futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Joseph Storer of the Division of Economic Analysis, Commodity Future Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on January 29, 1991.

Gerald Gay,

Director.

[FR Doc. 91-20505 Filed 2-1-91; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### USAF Scientific Advisory Board; Meeting

January 11, 1991.

The USAF Scientific Advisory Foreign Technology Division Advisory Group will meet on 26-27 February 1991, from 8 a.m. to 5 p.m., at the Foreign Technology Division, Wright-Patterson AB, OH.

The purpose of this meeting is to receive classified briefings and hold classified discussions on FTD items of interest.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-2479 Filed 2-1-91; 8:45 am]

BILLING CODE 3910-01-M

#### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Modelling and Simulation will meet on 1 Mar 91 from 8 a.m. to 5 p.m. at the Pentagon, Washington DC 20330.

The purpose of this meeting will be to prepare the final study briefing and report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-2480 Filed 2-1-91; 8:45 am]

BILLING CODE 3910-01-M

#### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Modelling and Simulation will meet on 20 Feb. 91 from 8 a.m. to 5 p.m. at Headquarter Strategic Air Command, Offutt AFB, NE.

The purpose of this meeting will be to receive briefings in support of the SAB study. This meeting will involve discussions of classified defense matters

listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 91-2520 Filed 2-1-91; 8:45 am]

BILLING CODE 3910-01-M

## Department of the Army

### Notice of Availability; Environmental Impact Statement for the Yakima Firing Center Proposed Land Acquisition, Yakima, WA

**AGENCY:** Department of Defense, Department of the Army, Fort Lewis, Washington.

**ACTION:** Notice of Availability of a Final Environmental Impact Statement (FEIS) for the Yakima Firing Center (YFC) Proposed Land Acquisition, Yakima, Washington.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Army has prepared a FEIS on the proposed acquisition of approximately 63,000 acres of additional maneuver training land near the Yakima Firing Center (YFC), Yakima, Washington in fiscal year 1992.

The requirement for additional maneuver area, beyond what is available at Fort Lewis and YFC, is a result of three major factors. First is the increased emphasis on brigade level combined arms training by both Active and Reserve Component (AC/RC) units Army wide. This increased emphasis results from changes in Army doctrine, organizations, and equipment which in turn respond to evolving battlefield requirements. The land expansion at YFC will enhance the ability of AC/RC units to train to realistic brigade and battalion levels. Second, the expansion will provide sufficient land to permit live-fire operations to continue at the same time large scale maneuver training exercises are conducted. YFC is the only major training area in the northwest continental United States that can accommodate the safety fans for all modern ground and Army air weapons platforms. Despite the trend to reduce forces, the Army must maintain training areas large enough to support the current and future live-fire and maneuver training and testing requirements and support potential mobilization requirements. Finally, the expansion will also permit environmentally sound land

management practices. The increased usage of YFC by all types of maneuver forces has mandated the careful monitoring and conservation of our existing land resources.

The following alternatives were considered in this FEIS: (1) The Preferred Alternative—the land proposed to be acquired lies in Yakima, Kittitas and Grant Counties, Washington, and encompasses approximately 63,000 acres. The land includes a northern expansion area (North of the existing YFC), an eastern expansion area (east of the existing YFC), and a river crossing site on the east bank of the Columbia River; (2) The Hanford Reservation Alternative—the areas of the Hanford Site that were considered for acquisition included: the Arid Lands Ecology (ALE) Reserve; the buffer area located north of Washington State Highway #24, west of highway #240, and south of the Columbia River; the Wahluke Wildlife Area and the Saddle Mountains Refuge Area; (3) The No Action Alternative—the no action alternative would maintain the current acreage and training activity at the YFC. YFC would continue to have a shortfall of available maneuver area for training, and not enough land to provide fallow time for land rehabilitation without interfering with realistic maneuver and live-fire training.

A copy of this YFC FEIS can be obtained by writing or contacting Mr. Gary Stedman, Headquarters I Corps and Fort Lewis, Environmental and Natural Resources Division (Attn: AFZH-DEQ), Fort Lewis, Washington 98433-5000. Telephone calls may be placed to (206) 967-5337 or 967-5646.

Dated: January 25, 1991.

Lewis D. Walker,

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).*

[FR Doc. 91-2538 Filed 2-1-91; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Advisory Committee on Testing in Chapter 1; Establishment

**AGENCY:** Office of the Secretary, Education.

**ACTION:** Notice of establishment of Advisory Committee on Testing in Chapter 1.

**SUMMARY:** The Acting Secretary of Education (Acting Secretary) announces his intention to establish the Advisory Committee on Testing in chapter 1 under the authority of the Federal Advisory Committee Act (Pub. L. 92-463; 5

U.S.C.A. appendix 2) and the General Education Provisions Act, part D (Pub. L. 90-247, as amended; 20 U.S.C. 1233 *et seq.*).

**PURPOSE:** The Acting Secretary has determined that the establishment of the Advisory Committee on Testing in chapter 1 is necessary and in the public interest in connection with the performance of duties imposed on the Department by law. These duties require the Secretary of Education (Secretary) to assess the adequacy of standardized tests used to measure the academic achievement of chapter 1 students. The Committee will advise and make recommendations to the Secretary on possible improvements or alternatives for current testing procedures in the chapter 1 program. These recommendations will include possible changes in test instrumentation, administration, and the reporting of test results at the State and local levels. The Committee will issue a final report approximately one year from the date of its initial meeting. The Committee will consist of not more than seventeen members who have extensive backgrounds in educational evaluation, assessment and testing, education for the disadvantaged, educational administration, including local school boards, and parent involvement in schools.

**RESPONSIBLE OFFICIAL:** John T. MacDonald, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, Washington, DC 20202-6100, Telephone: (202) 401-0113.

Dated: January 24, 1991.

Ted Sanders,

*Acting Secretary of Education.*

[FR Doc. 91-2507 Filed 2-1-91; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance: University of Wisconsin

**AGENCY:** U.S. Department of Energy.

**ACTION:** Intent to negotiate a grant agreement entitled "Development of Phosphate-Based Ceramic Membranes" with the University of Wisconsin, Madison, Wisconsin.

**SUMMARY:** The Department of Energy announces that it plans to award a grant noncompetitively to the University of Wisconsin for ceramic membrane research and development. This award will be for a period of one year at a total cost of approximately \$170,000. This action is authorized by Public Law 93-

577, Federal Nonnuclear Energy Research and Development Act of 1974. The proposed activity will investigate the fabrication of ceramic membranes, the deposition of such membranes on porous supports, and the testing and evaluation of the membranes. The membranes should be useful for energy-saving alternatives to current separation processes in the chemical, food, and petroleum industries. In addition, the technology would provide a competitive advantage to the U.S. in the area of membrane development and possibly manufacturing. The award of this noncompetitive assistance is justified under subparagraphs (A) and (D) of 10 CFR 600.7(b)(2)(i) as follows: (A) The Activity to be funded is necessary to the satisfactory completion of research and the continuation of a special research contract being funded by DOE under DE-AS07-86ID12626, and for which competition for support would have a significant adverse effect on continuity of the activity; (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other than such unique qualifications.

**CONTACT:** U.S. Department of Energy, Idaho Operations Office, Attn: Scott D. Applonie, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402-1129 (208) 526-8558.

**PROCUREMENT REQUEST NUMBER:** 07-91ID13062.000.

Dated: January 18, 1991.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91-2549 Filed 2-1-91; 8:45 am]

BILLING CODE 6450-01-M

### Office of the Deputy Secretary

#### U.S. Alternative Fuels Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

**Name:** United States Alternative Fuels Council

**Date and Time:** Thursday, February 14, 1991, 9 a.m.-2 p.m., Friday, February 15, 1991, 9 a.m.-3:30 p.m.

**Location:** Colorado Convention Center, room C-210, 700 West 14th Street, Denver, Colorado.

**Contact:** Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop AC-26, Washington, DC 20585, Phone: (202) 586-3891.

**Purpose of the Council:** To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "... coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "... ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "... ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "... provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

### SCHEDULE OF ACTIVITIES

February 14, 1991

9 a.m.-10:30 a.m.

Energy Security Session  
Chair: Charles R. Imbrecht

10:30 a.m.-11:30 a.m.

Presentation on Alternative Motor Fuels Act Implementation and DOE Research on Alternative Motor Fuels  
Chair: Charles R. Imbrecht

11:30 a.m.-12:30 p.m.

Lunch

12:30 p.m.-2 p.m.

Alternative Fuel Policy Session of the Council—Part I  
Chair: Robert W. Hahn

February 15, 1991

9 a.m.-10:30 a.m.

Alternative Fuel Policy Session of the Council—Part II  
Chair: Charles R. Imbrecht

10:30 a.m.-12 p.m.

Discussion of Future Meetings and Agendas

Chair: Robert W. Hahn

12 p.m.-1 p.m.

Lunch

1 p.m.-2:30 p.m.

Alternative Fuels and Climate Change Session

Chair: Charles R. Imbrecht

—Mark Deluchi, Princeton University  
—Diane Fisher, Environmental Defense Fund

—Stan Bull, SERI

2:30 p.m.-3:30 p.m.

Presentation of Results from the Automotive Petroleum Task Force on Alternative Motor Fuels

Chair: Robert W. Hahn

—Jack Wise, Mobil Oil Corporation

3:30 p.m.-3:45 p.m.

Public Comment Period and Adjournment

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

**Minutes:** Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 30, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-2550 Filed 2-1-91; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket Nos. QF91-57-000, et al.]

#### Potlatch Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

##### 1. Potlatch Corporation

[Docket No. QF91-57-000]

January 22, 1991.

On January 14, 1991, Potlatch Corporation of One Maritime Plaza, 24th Floor, San Francisco, California 94111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at Potlatch's lumber operations on West Pine Street, in Warren, Arkansas, and will consist of a waste wood-fired boiler and an extraction/condensing steam turbine generator (STG). The facility will also include a 5 mile 13.8 kV transmission

line which connects the Applicant generating facility to another Applicant's lumber plant at Fullerton Street. The steam recovered from the STG will be used in wood drying kilns and steam powered equipments. The gross electric power production capacity of the facility will be 15 MW. The primary source of energy will be biomass in the form of waste wood, wood chips and sawdust. Installation of the facility commenced in December 1989.

*Comment date:* Up to March 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

## 2. Southwestern Public Service Co.

[Docket No. ER85-477-008]

January 24, 1991.

Take notice that on January 18, 1991, Southwestern Public Service Company tendered for filing its compliance filing in this docket pursuant to the Commission's order issued on December 19, 1990.

*Comment date:* February 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

## 3. Arizona Public Service Co.

[Docket Nos. ER89-265-011]

January 24, 1991.

Take notice that on January 22, 1991, Arizona Public Service Company tendered for filing a Compliance Refund Report for refunds made to Southern California Edison (SEC) in accordance with the Commission's letter of approval dated December 6, 1990.

Copies of this filing have been served upon SEC and the Arizona Corporation Commission.

*Comment date:* February 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

## 4. Vermont Yankee Nuclear Power Corp.

[Docket No. ER91-186-000]

January 24, 1991.

Take notice that on January 8, 1991, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted certain replacement pages for the revised schedule of decommissioning collections that it tendered for filing on December 28, 1990. Vermont Yankee stated that the replacement pages correct an inadvertent error in the pages originally submitted.

*Comment date:* February 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

## 5. PSI Energy, Inc.

[Docket Nos. ER90-568-000, ER91-127-000, ER91-176-000, and ER91-179-000]

January 24, 1991.

Take notice that on January 17, 1991, tendered for filing amended Service Schedules to the FERC Filings in Docket Nos. ER90-568-000, ER91-127-000, ER91-176-000 and ER91-179-000.

These amended Service Schedules change the energy pricing language for Short Term Power, Short-Term Capacity and Energy, Limited Term Power, Limited-Term Capacity and Energy, Scheduled Supplemental Power and Seasonal Power. These Service Schedules are in the Interchange Agreement with American Municipal Power-Ohio, Inc. and the Interconnection Agreement with Indiana Michigan Power Company, Consumers Power Company and Louisville Gas and Electric Company.

Copies of the filing were served on Indiana Michigan Power Company, American Electric Power Service Corporation, the Michigan Public Service Commission, American Municipal-Ohio, Inc., The Public Utilities Commission of Ohio, Consumers Power Company, Louisville Gas and Electric Company, the Public Service Commission of Kentucky and the Indiana Utility Regulatory Commission.

PSI has requested that the effective dates, per the original filings, remain unchanged. Per Docket No. ER90-568-000 the effective date is August 1, 1990, per Docket No. ER91-127-000 the effective date is November 26, 1990, per Docket No. ER91-176-000 the effective date is May 1, 1991 and per Docket No. ER91-179-000 the effective date is January 1, 1991.

*Comment date:* February 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

## 6. Central Illinois Public Service Co.

[Docket No. ER91-222-000]

January 24, 1991.

Take notice that on January 17, 1991, Central Illinois Public Service Company (CIPS) tendered for filing a Modification No. 1 to Service Schedule G, dated January 8, 1991, to a Power Supply Agreement dated June 11, 1987, and a Supplemental Agreement, dated January 8, 1991, to the Transmission Services Agreement dated June 11, 1987, between CIPS and Illinois Municipal Electric Agency (IMEA). CIPS also tendered for filing two revised schedules adding the City of Roodhouse, Illinois to the IMEA members receiving service under the Agreements. Under these various interdependent agreements and schedules, as amended, CIPS will

provide expanded electric power supply and transmission services to IMEA as principle and as agent for certain municipalities. CIPS and IMEA request an effective date of March 1, 1991, and, therefore, request waiver of the Commission's notice requirements.

Copies of the filing have been served on IMEA and the Illinois Commerce Commission. Copies of the transmittal letter have been served on CIPS other wholesale requirements customers.

*Comment date:* February 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

## Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2486 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-460-001; CP90-1375-000]

## Pacific Gas Transmission Co. and Altamont Gas Transmission Co.; Intent to Conduct Informal Public Meetings Inviting Comments on the PGT/PG&E and Altamont Natural Gas Pipeline Projects Draft Environmental Impact Statement

February 1, 1991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) intends to conduct informal public meetings for the purpose of soliciting comments on the draft environmental impact statement (EIS) which was circulated to the public and noticed in the *Federal Register* on January 18, 1991 (see 56 FR 2017). The attachment lists the locations, dates, and times of the meetings.

The purpose of these meetings is to allow state and local government

agencies and interested individuals in the general public the opportunity to provide oral comments on the draft EIS. Written comments may also be submitted in lieu of oral comments at these meetings. The offer of comments at the meetings in no way precludes submittal of further written comments before the close of the comment period on March 4, 1991. Prospective commenters are requested to notify the appropriate FERC environmental project manager (see below) by February 20, 1991 of their intent to comment and at which meeting they intend to do so. Following brief opening remarks and introductions by the presiding official, preregistered speakers will be allowed to present their comments. Following the preregistered speakers, those who have not preregistered will present their comments. All commenters will be requested to limit their presentations to 5 minutes in length. This will afford time for others to participate. Additional time may be granted to anyone making comments by the presiding official as time permits.

Because these are informal meetings and not formal administrative hearings, commenters will not be cross-examined, but their remarks will be stenographically recorded to assist in the preparation of responses. Responses to comments will appear in the final EIS after due consideration. Copies of the written transcript of each public meeting may be purchased by arrangement with the official reporter at each meeting.

As previously stated, informal public meetings are intended as an opportunity for state and local governments and the general public to provide comments directly to the FERC staff. Cooperating agencies have formal channels for input into the EIS and are expected to coordinate their comments through the lead Federal agency outside the public meeting mechanism.

To obtain further information concerning the public comment meetings or to preregister to present comments, please contact the appropriate FERC environmental project manager as follows:

*For the PGT/PG&E Project—*

Mr. Mark C. Kalpin, telephone (202) 208-0918

*For the Altamont Project—*

Mr. Laurence J. Sauter, Jr., telephone (202) 208-0205

*Mailing address for both projects—*

Room 7312, Environmental

Compliance Branch, OPR, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,  
*Secretary.*

**Schedule for Public Meetings on the PGT/PG&E and Altamont Natural Gas Pipeline Projects Draft EIS**

All meetings will begin promptly at 7 p.m.

*PGT/PG&E Project*

Tuesday, February 26, 1991—Kootenai River Inn, Kootenai River Plaza, Bonners Ferry, ID, telephone (208) 267-8511.

Thursday, February 28, 1991—The Riverhouse Inn, 3075 N. Highway 97, Bend, OR, telephone (503) 389-3111.

*Altamont Project*

Tuesday, February 26, 1991—Holiday Inn, North Federal at Sunset, Riverton, WY, telephone (307) 856-8100.

Wednesday, February 27, 1991—Sheraton Hotel, 27 North 27th, Billings, MT, telephone (406) 252-7400.

[FR Doc. 91-2493 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-942-000, et al.]

**Transcontinental Gas Pipe Line Corp., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP91-942-000]

January 22, 1991.

Take notice that on January 15, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396 Houston, Texas 77251 filed in Docket No. CP91-942-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation (Tejas), under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and opens to public inspection.

Transco proposes to transport, on an interruptible basis, up to 2,718,000 dt equivalent of natural gas per day for Tejas. Transco states that construction

of facilities would not be required to provide the proposed service.

Transco states that the maximum day, average day, and annual transportation volumes would be approximately 2,718,000 dt, 50,000 dt and 18,250,000 dt equivalent of natural gas respectively.

Transco advises that service under § 284.223(a) commenced November 16, 1990, as reported in Docket No. ST91-6219-000.

*Comment date:* March 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

**2. Florida Gas Transmission Co., Florida Gas Transmission Co. and ANR Pipeline Co.**

[Docket Nos. CP91-953-000,<sup>1</sup> CP91-954-000 and CP91-955-000]

January 22, 1991.

Take notice that on January 17, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the Applicants' address, the docket number of the blanket certificate, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* March 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>1</sup> These prior notice requests are not consolidated.

| Docket No.<br>(contract No.) | Applicant   | Shipper name                          | Peak day, <sup>1</sup><br>average,<br>annual | Points of                                    |                             | Start up date, rate<br>schedule, service<br>type | Related dockets <sup>2</sup>               |
|------------------------------|---|---------------------------------------|--|--|-----------------------------|--|--|
|                              |   |                                       |  | Receipt                                      | Delivery                    |  |  |
| CP91-953-000                 | Florida Gas<br>Transmission<br>Company 1400<br>Smith Street,<br>Houston, Texas<br>77002 | Kissimme Utility<br>Authority.        | 1,172<br>781<br>284,900                      | TX & LA                                      | FL                          | 11-10-90, FTS-1<br>Firm.                         | RP89-50-000, et<br>al., ST91-6407-<br>000. |
| CP91-954-000                 | Florida Gas<br>Transmission<br>Company.   | Kissimmee<br>Utility<br>Authority.    | 471<br>353<br>171,742                        | TX, LA, MS, AL,<br>FL, & Off. TX &<br>LA.    | FL                          | 11-10-90, PTS-1<br>Preferred.                    | RP89-50-000, et<br>al., ST91-6406-<br>000. |
| CP91-955-000                 | ANR Pipeline<br>Company 500<br>Renaissance<br>Center Detroit,<br>Michigan 48243.        | Western Gas<br>Marketing<br>USA LTD.. | 437,000<br>437,000<br>195,505,000            | Dth Various, Dth<br>Existing, Dth<br>Points. | Various Existing<br>Points. | 11-22-90, ITS<br>Interruptible.                  | CP88-532-000,<br>ST91-5597-000.            |

<sup>1</sup> Quantities are shown in MMBtu unless otherwise indicated.

<sup>2</sup> The CP and RP docket numbers correspond to applicant's blanket transportation certificate. The ST docket number represents that a 120-day transportation service.

### 3. Algonquin Gas Transmission Co.

[Nos. CP91-890-000, CP91-891-000, CP91-892-000, CP91-893-000, CP91-894-000, and CP91-895-000]

January 22, 1991.

Take notice that Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the

Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-948-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>2</sup>

Information applicable to each transaction, including the identity of the

<sup>2</sup> These prior notice requests are not consolidated.

shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* March 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed)   | Shipper name (type)  | Peak day,<br>average day,<br>annual MMBtu | Receipt points | Delivery points | Contract date, rate<br>schedule, service<br>type | Related docket,<br>start up-date               |
|---------------------------|--|---|----------------|-----------------|--|--|
| CP91-890-000<br>(1-10-91) | Seagull Marketing<br>Services, Inc.<br>(marketer).                   | 100,000<br>100,000<br>36,500,000          | MA, NJ         | CT              | 9-4-90, AIT-1,<br>Interruptible.                 | ST91-1708,<br>10-4-90                          |
| CP91-891-000<br>(1-10-91) | Amoco Production<br>Company (marketer).                              | 60,000<br>60,000<br>21,900,000            | MA, CT, NY, NY | CT              | 9-27-90, AIT-1,<br>Interruptible.                | ST91-1706,<br>10-12-90                         |
| CP91-892-000<br>(1-10-91) | Fina Oil and Chemical<br>Company (marketer).                         | 40,000<br>40,000<br>14,600,000            | NY, NJ         | RI              | 9-4-90, AIT-1,<br>Interruptible.                 | ST91-1707,<br>10-4-90                          |
| CP91-893-000<br>(1-10-91) | Meridian Marketing and<br>Transmission<br>Corporation<br>(marketer). | 30,000<br>30,000<br>21,900,000            | MA, NJ         | CT              | 8-29-90, AIT-1,<br>Interruptible.                | ST91-6115,<br>12-1-90<br>ST91-7104,<br>9-27-90 |
| CP91-894-000<br>(1-10-91) | Phibro Distributors<br>Corporation<br>(marketer).                    | 150,000<br>150,000<br>54,750,000          | MA, NY, CT, NJ | CT              | 8-18-90, AIT-1,<br>Interruptible.                | ST91-1705,<br>10-1-90                          |
| CP91-895-000<br>(1-10-91) | Panhandle Trading<br>Company (marketer).                             | 5,000<br>5,000<br>1,825,000               | MA, NY, NJ     | CT              | 9-4-90, AIT-1,<br>Interruptible.                 | ST91-1703,<br>10-1-90                          |

### 4. Southern Natural Gas Co.

[Docket Nos. CP91-929-000, CP91-930-000, and CP91-931-000]

January 22, 1991.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to

transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>3</sup>

Information applicable to each transaction, including the identity of the

<sup>3</sup> These prior notice requests are not consolidated.

shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* March 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed)   | Shipper name (type)                   | Peak day, average day, annual Mcf | Receipt points <sup>1</sup> | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---------------------------|---------------------------------------|-----------------------------------|-----------------------------|-----------------|--|-------------------------------|
| CP91-929-000<br>(1-14-91) | City of Tifton, Georgia (LDC).        | 375<br>375<br>136,875             | Various.....                | AL.....         | FT Firm.....                               | ST91-5229,<br>11-16-90.       |
| CP91-930-000<br>(1-14-91) | Cullman-Jefferson Counties Gas (LDC). | 3,000<br>3,000<br>10,950,000      | Various.....                | AL.....         | FT Firm.....                               | ST91-5794,<br>12-7-90.        |
| CP91-931-000<br>(1-14-91) | Austell Gas System (LDC).             | 8,295<br>8,295<br>3,027,675       | Various.....                | GA.....         | FT Firm.....                               | ST91-5795,<br>12-2-90.        |

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

#### 5. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-943-000]

January 22, 1991.

Take notice that on January 15, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501 filed in Docket No. CP91-943-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Coastal Gas Marketing Company (Coastal), under Williston Basin's blanket certificate issued in Docket No. CP89-1118-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to transport, on an interruptible basis, up to 285 dt equivalent of natural gas per day for Coastal. Williston Basin states that construction of facilities would not be required to provide the proposed service.

Williston Basin states that the maximum day, average day, and annual transportation volumes would be approximately 285 dt, 285 dt and 104,025 dt equivalent of natural gas respectively.

Williston Basin advises that service under § 284.223(a) commenced November 30, 1990, as reported in Docket No. ST91-6137-000.

*Comment date:* March 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

#### 6. Columbia Gas Transmission Corp.

[Docket No. CP91-940-000]

January 23, 1991.

Take notice that on January 15, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP91-940-000 an application pursuant to

section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain mainline replacement facilities in West Virginia and Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the following facilities:

(1) 4.5 miles of 20-inch pipeline to replace 4.5 miles of 16-inch pipeline on Line 1570 in Wetzel and Marion Counties, West Virginia.

(2) 1.4 miles of 20-inch pipeline to replace 1.3 miles of 18-inch pipeline on Line A in Madison County, Ohio.

(3) 2.0 miles of 16-inch pipeline to replace 1.4 miles of 16-inch and 0.7 mile of 12-inch pipeline on Line L in Ashland County, Ohio.

Columbia states the existing pipelines have physically deteriorated to the extent that replacement is required to maintain safe and reliable operation of the various segments of pipelines.

Columbia further states that Line 1570 was constructed in 1947, Line A was constructed in 1941 and Line L was constructed in 1912.

Columbia also states that the replacement pipeline would be sized to take into account present and estimated future requirements of the pipeline segments and to enhance maintenance operations.

Columbia asserts that replacement pipelines proposed herein would have a *de minimis* effect on the capacity of the various pipeline segments.

Columbia states that the proposed facilities would cost \$3,556,660 which would be financed with funds generated from internal sources.

*Comment date:* February 13, 1991, in accordance with Standard Paragraph F at the end of this notice.

#### 7. Transcontinental Gas Pipe Line Corp., Southern Natural Gas Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., Florida Gas Transmission Co., Southern Natural Gas Co., and Mobile Bay Pipeline Projects

[Docket Nos. CP89-522-002, CP89-517-001 and CP88-570-004]

January 23, 1991.

Take notice that on January 15, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77251, Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston, Texas 77056-5310, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188 (Applicants), filed an amended application in Docket No. CP89-522-002 to amend the currently pending application in Docket No. CP89-522-001, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

As part of a settlement (submitted pursuant to rule 602 of the Commission's Rules of Practice and Procedure) filed in the above listed application, Applicants would alter the original proposal to: Include FGT, Southern, Tetco and Tennessee as joint owners and operators in the Docket No. CP89-522-001 facilities. Applicants state that this settlement would constitute a finding that this proposal raises no issues of mutual exclusivity as to any other offshore project included in the Mobile Bay open season proceedings, and any order herein would resolve all non-environmental issues in Docket No. CP89-522-001 and authorization to construct and operate approximately 27.21 miles of 30-inch pipeline extending from an interconnection with the

onshore pipeline which is the subject of Docket No. CP89-523-001 (which interconnection is in the vicinity of a gas treatment plant being constructed by Shell Offshore, Inc. in Mobile County, Alabama) to Mobile Block 955 and approximately 50.46 miles of 26-inch pipeline from Mobile Block 955 to a metering and regulating station to be constructed on Shell's platform in Main Pass Area, Block 252, offshore Alabama.

Further, Applicants request authority to utilize their respective, generally applicable rate schedules and to charge the applicable rates thereunder for all services rendered through their respective capacity in the proposed pipeline system.

Applicants state that neither this settlement nor any of the provisions hereof shall become effective unless and until: (1) Applicants in Docket No. CP89-523-001 have notified the Commission in writing of the acceptance of any certificate issued therein; (2) the Commission approves the settlement proposed herein without modification or condition; (3) such order is no longer subject to rehearing; and (4) Applicants notify the Commission in writing of acceptance of any certificate issued herein.

*Comment date:* February 13, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### 8. United Gas Pipe Line Co.

[Docket No. CP91-968-000]

January 23, 1991.

Take notice that on January 18, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-5390, filed in Docket No. CP91-968-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to operate a one-inch sales tap and related facilities for the delivery of natural gas to Willmut Gas & Oil Company (Willmut) in Rankin County, Mississippi under the blanket certificate issued in Docket No. CP82-430-000, and pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that this one-inch tap was originally installed in Docket No.

CP86-103-000 to sell gas to Mississippi Valley Gas Company (Mississippi Valley), a local supply company, for resale to three small customers. According to United, it was determined by Willmut and Mississippi Valley that the tap was in Willmut's certificated area. It is stated that Mississippi Valley is willing to transfer the three small customers and ownership of the tap to Willmut, and Willmut will reimburse United for all costs relating to the change in operation. United states that since no construction is proposed herein, and the previous construction was authorized in Docket No. CP86-103-000, United did not provide environmental clearances for the project. United states that it will provide Willmut with an estimated maximum volume of 3 Mcf per day of natural gas for residential and commercial use.

United submits that it is authorized in Docket No. G-478 to provide all of Willmut's natural gas requirements for residential and commercial use in its East Jackson billing area. It is further stated that the effective service agreement for such service is dated October 18, 1979, and provides for sales to Willmut under United's Rate Schedule G.

According to United, the new sales tap will not result in an increase in Willmut's aggregate base requirements or contractual MDQ. United states that the total certificated entitlement for Willmut's is 49,688 Mcf, which is the contractual MDQ. United submits that the proposed sale is within the limitations set for this particular billing location.

United states that the following chart illustrates the impact of its proposal on Willmut's MDQ.

PEAK DAY AND ANNUAL VOLUMES

|               | Actual Mcf <sup>1</sup> | Proposed additional Mcf <sup>2</sup> | Total Mcf |
|---------------|-------------------------|--------------------------------------|-----------|
| Peak day..... | 420                     | 3                                    | 423       |
| Annual.....   | 153,300                 | 1,095                                | 154,395   |

<sup>1</sup> Data published in United's 1989 FERC Form No.

<sup>2</sup> Data supplied by Mississippi Valley.

United states that it will operate the proposed sales tap in compliance with part 157, subpart F, appendices I and II

of the Commission's Regulations; that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers; and that its tariff does not prohibit the addition of new points.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

#### 9. United Gas Pipe Line Co., United Gas Pipe Line Co., and Southern Natural Gas Co.

[Docket Nos. CP91-961-000, CP91-962-000, and CP91-963-000]

January 23, 1991.

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants) filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket Nos. CP88-6-000 and CP88-316-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.<sup>4</sup>

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation dates; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>4</sup> These prior notice requests are not consolidated.

| Docket number (dated filed) | Shipper name (type)   | Peak day average day annual MMBtu | Receipt points <sup>1</sup> | Delivery points         | Contract date rate schedule service type | Related docket, start up date |
|-----------------------------|---|-----------------------------------|-----------------------------|-------------------------|--|-------------------------------|
| CP91-961-000<br>(1-17-91)   | Arkla Energy, Marketing Company (Producer).                   | 206,000<br>206,000<br>75,190,000  | AL, LA, OLA, MS, TX.....    | AL, FL, LA, MS, TX..... | 2-12-88, ITS, Interruptible.             | ST91-6015, 11-28-90.          |
| CP91-962-000<br>(1-17-91)   | Chevron U.S.A., Inc., (Producer).                             | 3,090<br>3,090<br>1,127,850       | LA.....                     | LA.....                 | 10-24-90, ITS, Interruptible.            | ST91-6010, 12-4-90.           |
| CP91-963-000<br>(1-17-91)   | Cullman-Jefferson, Counties Gas District (Local Distributor). | 3,500<br>3,500<br>1,277,500       | * AL, LA, OLA, MS, TX, OTX. | LA.....                 | 12-1-90, FT, Firm....                    | ST91-5793, 12-7-90.           |

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

<sup>2</sup> Mcl.

#### 10. Northern Natural Gas Co.

[Docket Nos. CP91-898-000, CP91-899-000, CP91-900-000, and CP91-901-000]

January 23, 1991.

Take notice that on January 10, 1990, Northern Natural Gas Company (Applicant), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket

No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>5</sup>

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket

<sup>5</sup> These prior notice requests are not consolidated.

numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (dated filed) | Shipper name                    | Peak day <sup>1</sup> average day annual | Receipt points <sup>2</sup>         | Delivery points                             | Start up date rate schedule service type | Related <sup>3</sup> docket, contract date |
|-----------------------------|---------------------------------|--|-------------------------------------|---|--|--|
| CP91-898-000<br>(1-10-90)   | NGC Transportation, Inc..       | 100,000<br>75,000<br>36,500,000          | OK, KS, TX, NM, WI, IA, SD, MN, NE. | TX, KS.....                                 | 12-08-90, IT-1, Interruptible.           | ST91-8049-000, 12-08-90.                   |
| CP91-899-000<br>(1-10-90)   | Enron Gas Processing Company.   | 150,000<br>112,500<br>54,750,000         | OK, TX, KS, NM, WI, IA, NE, SD, MN. | TX, KS.....                                 | 12-01-90, IT-1, Interruptible.           | ST91-6051-000, 12-01-90.                   |
| CP91-900-000<br>(1-10-90)   | Reliance Gas Marketing Company. | 30,000<br>22,500<br>10,950,000           | OK, KS, TX, NM, WI, IA, SD, MN, NE. | KS, TX, WI, IA, SD, MN, NE, MI, NM, OK, IL. | 11-13-90, IT-1, Interruptible.           | ST91-5460-000, 11-13-90.                   |
| CP91-901-000<br>(1-10-90)   | Ledco, Inc.....                 | 60,000<br>45,000<br>21,900,000           | OTX, OLA.....                       | KS, TX, WI, IA, MN.....                     | 12-01-90, IT-1, Interruptible.           | ST91-8048-000, 12-01-90.                   |

<sup>1</sup> Quantities are shown in MMBtu.

<sup>2</sup> Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.

<sup>3</sup> If an ST docket is shown, 120-day transportation service was reported in it.

#### 11. Williams Natural Gas Co.

[Docket No. CP91-956-000]

January 24, 1991.

Take notice that on January 17, 1991, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-956-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of approximately 28 miles of 16-inch pipeline with 20-inch pipeline in Sedgwick and Harvey Counties, Kansas, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

Specifically, WNG states that it seeks authority to replace approximately 28 miles of 16-inch pipeline with 20-inch pipeline on its Hesston-Wichita segment in Sedgwick and Harvey Counties, Kansas, in order to maintain reliable service to Wichita, Kansas during the heating season.

WNG states that the proposed facilities will cost approximately \$8,600,000 which will be paid from funds on hand.

*Comment date:* February 14, 1990, in accordance with Standard Paragraph F at the end of this notice.

#### 12. Ozark Gas Transmission Co.

[Docket Nos. CP91-944-000 and CP91-945-000]

January 24, 1991.

Take notice that on January 14, 1991, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket Nos. CP91-944-000 and CP91-945-000 applications pursuant to section 7(c) of the Natural Gas Act and subpart G of part 284 of the Commission's Regulations for a

certificate of public convenience and necessity authorizing the construction and operation of pipeline compression and delivery point facilities, an increase in the certificated transportation levels, and various minor modifications to services rendered under existing rate schedules; and for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

In Docket No. CP90-944-000, Ozark proposes to:

(a) Construct, install and operate two 5,000 horsepower compressor units at a new compressor station (to be known as the Razorback Compressor Station) located near Milepost 133, the mid-point of the Ozark system, in Franklin County, Arkansas;

(b) Construct, install and operate two 5,000 horsepower compressor units at a new compressor station (to be known as the Devil's Creek Compressor Station) located near Milepost 68 in Pope County, Arkansas;

(c) Increase the certificated design capacity of Ozark from 170,000 Mcf per day (Mcf) to 330,000 Mcf, provide for a corresponding increase in total transportation authority to 330,000 Mcf, which would be allocated 165,000 MMBtu per day each to Columbia Gulf Transmission Company (Columbia Gulf) and Tennessee Gas Pipeline Company (Tennessee);

(d) Modify Rate Schedule T-1, general terms and conditions, and associated T-1 service agreements to reflect the increase in firm transportation authority and to incorporate various other minor revisions; and

(e) Construct and operate facilities necessary to increase the capacity to the existing Searcy delivery point in White County, Arkansas to accommodate the proposed increase in firm transportation volumes.

Ozark estimates that the proposed facilities would cost \$17,071,000, which would be entirely financed by equity contributions from the general partners which own Ozark. Ozark states that the proposed expansion would enable Tennessee and Columbia Gulf, currently the only firm shippers on Ozark, to diversify the supplies available for their merchant services. It is noted that the majority of the system supply of Tennessee and Columbia Gulf emanate from other producing areas and that an expansion of Ozark would not only augment their respective system supply portfolio but would provide direct access to the reserves on the Arkoma Basin. It is asserted that the Ozark expansion would also benefit producers and consumers by encouraging the timely development of Arkoma Basin reserves.

Ozark explains that its proposed expansion is to be undertaken in conjunction with a number of other related activities, which, taken together, will permit direct redelivery of Ozark firm transportation volumes into the mainline systems of Tennessee and Columbia Gulf. Specifically these activities are as follows:

(1) Arkla Energy Resources, a division of Arkla, Inc. (Arkla) is to construct a pipeline connecting the eastern terminus of Ozark (at Searcy, White County, Arkansas) with Mississippi River Transmission Corporation's (MRT) mainline near the West Point Compressor Station in White County, Arkansas;

(2) Columbia Gulf and Tennessee will file applications to acquire ownership interests in the Ozark-MRT connecting line entitling them each to 165,000 Mcf of capacity. They would also file to acquire equivalent ownership interests and capacity entitlements in MRT's existing mainline from the West Point Compressor Station south to Glendale, Arkansas, the point where Arkla's Line AC interconnects with MRT's mainline; and

(3) Columbia Gulf and Tennessee will file an application to construct and operate 92 miles of 30-inch pipeline extending east from Glendale to interconnections with their respective pipelines near Inverness and Isola, Mississippi. Columbia Gulf and Tennessee would each have 165,000 Mcf of capacity in the new line.

In Docket No. CP91-945-000, Ozark requests a part 284 blanket certificate. Ozark states that it intends to become a transporter under the terms and conditions of the Commission's Order No. 436 and Order No. 500. Ozark states that it is willing to accept and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations, which paragraph refers to subpart A of part 284 of the Commission's Regulations.

Ozark states that the application supercedes an earlier application for a blanket certificate which it had filed in 1985 in Docket No. CP86-250-000. Ozark notes that while the Commission issued an order granting a blanket certificate in that proceeding, it could not accept the certificate because the Commission rejected a settlement offer, modified proposed rates and imposed a revenue crediting condition. It is further noted that the Commission subsequently vacated the order, although that order has since been remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit.

Ozark states that its application in Docket No. CP91-945-000 is patterned after its application in Docket No. CP86-250-000, except that the proposed rates and the pro forma tariff have been modified. The terms and conditions

under which Ozark would perform firm and interruptible transportation services are set forth in pro forma Original Volume No. 1 to its FERC Gas Tariff as contained in the application.

Ozark states that upon issuance and acceptance of a blanket certificate it will hold a ten-day open season to accept valid requests for new interruptible transportation service where service would commence on or after the effective date of the proposed ITS rate schedule. Ozark indicates that it will provide public notice of the commencement date of the open season and that requests received during the open season would be deemed to have been received concurrently for purposes of scheduling and curtailment of interruptible capacity.

*Comment date:* February 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

### 13. Algonquin Gas Transmission Co.

[Docket No. CP91-952-000]

January 24, 1991.

Take notice that on January 16, 1991, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-952-000, pursuant to section 7(c) of the Natural Gas Act an application for certificate of public convenience and necessity authorizing Algonquin to construct and operate facilities and to transport and deliver natural gas for Boston Edison Company (Boston Edison), for use by Boston Edison at the proposed Edgar Energy Park Project (Edgar Project) in Weymouth, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate a 10.7 mile, 24-inch diameter lateral line, from its existing I-2 System near Avon, Massachusetts to the site of the Edgar Project. According to Algonquin, this lateral line will be constructed primarily along existing railroad and electric transmission rights-of-way. Algonquin also proposes to construct and operate a meter station, for Boston Gas Company, at the Edgar Project site. The estimated cost of Algonquin's proposed facilities is estimated to be approximately \$25 million. Algonquin states that it will use long-term financing to pay for the cost of the facilities.

Algonquin proposes to provide interruptible transportation service for Boston Edison under proposed new Rate Schedule X-36 for service from the new receipt point on the I-2 System at Avon, Massachusetts to a delivery point at the

Edgar Project. Algonquin states that this rate is designed to ensure recovery of the total cost of constructing the necessary facilities. Algonquin does not state where the volumes of gas will enter its system for transportation to the new receipt point, but does state that transportation upstream of the I-2 System receipt point would be provided pursuant to existing Rate Schedule AIT-1.

*Comment date:* February 14, 1990, in accordance with Standard Paragraph F at the end of this notice.

#### 14. Columbia Gulf Transmission Co.

[Docket No. CP91-970-000]

January 24, 1991.

Take notice that on January 18, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP91-970-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Fuel Services Group (Fuel Services), under the authorization issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf would perform the proposed interruptible transportation service for Fuel Services, pursuant to an ITS-2 transportation service agreement dated November 15, 1989, as amended August 24, 1990 (Agreement No. 5932B). The term of the transportation agreement is from November 15, 1989, and shall continue in full force and effect from month to month thereafter unless canceled by either party upon thirty days prior written notice to the other party. Columbia Gulf proposes to transport on a peak day up to 15,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis up to 3,650,000 MMBtu of natural gas for Fuel Services. Columbia Gulf states that it would transport the gas from points in Cameron, Vermilion, and Acadia Parishes, Louisiana, and would redeliver the gas to points in Acadia, Cameron, Terrebonne, St. Mary, and Vermilion Parishes, Louisiana. It is alleged that the rate to be charged Fuel Services for the proposed transportation service shall be in accordance with Columbia Gulf's ITS-1 and ITS-2 rate schedules.

Columbia Gulf avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed

pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Columbia Gulf commenced such self-implementing service on November 2, 1990, as reported in Docket No. ST91-6254-000.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

#### 15. Tennessee Gas Pipeline Co.

[Docket No. CP86-171-007]

January 24, 1991.

Take notice that on January 15, 1991, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002, filed a petition pursuant to section 7(c) of the Natural Gas Act to amend two of its certificates of public convenience and necessity (51 FERC ¶ 61,113, issued May 2, 1990; 52 FERC ¶ 61,257, issued September 13, 1990) (1) To extend the time until February 1, 1992, for completing and placing into service the authorized facilities and (2) to authorize on a temporary basis the use of portable compressors with a horsepower capacity not exceeding 4,500 horsepower at Station 241 and 3,600 at Station 249 until such time as installation of the permanent compressor units authorized at these stations is completed, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Tennessee states that approval of its petition to amend would permit Tennessee to make available authorized transportation services on a timely basis for its customers and Tennessee would further the goal of the Niagara Settlement in making gas supplies available to Northeast customers. Tennessee also states that it will bear the costs of the portable compression units, including installation expenses of \$20,000 to \$40,000 per unit, and that the noise levels of the portable compressor units will not exceed the noise level of the permanent compressors to be installed.

*Comment date:* February 8, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### 16. ONEOK, Inc., OkTex Pipeline Co. and ONEOK Services, Inc.

[Docket No. CP90-2286-001]

January 24, 1991.

Take notice that on January 18, 1991, ONEOK Inc. (ONEOK), OkTex Pipeline Company (OkTex), and ONEOK Services, Inc. (Services), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma

74102, collectively referred to as Applicants, filed in Docket No. CP90-2286-001 a joint application pursuant to section 7(c) of the Commission's Regulations under the Natural Gas Act to amend the application filed by Applicants in Docket No. CP90-2286-000 to request that the Commission grant Services a limited jurisdictional certificate to continue the transportation of natural gas for Coastal States Gas Transmission Company (Coastal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants explain that in the application in Docket No. CP90-2286-000 ONEOK requested permission and approval to abandon the transportation service for Coastal by assignment of the service to Services and OkTex. It was explained that OkTex would continue transportation for Coastal through its interstate facilities under the blanket certificate requested in Docket No. CP90-2286-000 and that Services would continue transportation for Coastal by leasing or selling undivided capacity rights in Services' intrastate facilities to Coastal so that Coastal may continue to perform such rights and obligations for the term of the existing contract pursuant to section 311(a)(2) of the NGPA.

Applicants state that it has become apparent that the aforesaid proposal unnecessarily complicates the service which would be provided for Coastal. Accordingly, Services requests that it be granted a limited jurisdictional certificate to continue the transportation service for Coastal in accordance with the terms and conditions of the existing contract and certificate and that such certificate extend until the termination of the contract with Coastal, i.e., September 30, 1999. Services requests that the Commission determine that, except for this limited section 7(c) service as well as the service previously requested for Arkla Energy Resources, with respect to its remaining operations it is not subject to the provisions of the Natural Gas Act and the rules and regulations thereunder, that it is an intrastate pipeline under the NGPA and the regulations thereunder, that the assumption of such service obligation by Services and its receipt and delivery of gas thereunder shall not affect Services' nonjurisdictional status as an intrastate pipeline, that Services is not required to file reports required of natural gas pipeline companies by the Commission's Regulations, and that it is not required to maintain its accounts pursuant to the Commission's Regulations. Services states that it would file an annual report

detailing the operations provided under this certificate.

*Comment date:* February 4, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### 17. Iroquois Gas Transmission System, L.P.

[Docket No. CP91-972-000]

January 25, 1991.

Take notice that on January 18, 1991, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 606, Shelton, Connecticut 06484, filed in Docket No. CP91-972-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a tap on the subsea portion of its Long Island Sound crossing under Iroquois' blanket certificate issued in Docket Nos. CP89-634-000 and CP89-634-001. Iroquois also requests a waiver of § 157.206(f) of the Commission's Regulations, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Iroquois states that United Illuminating, an electric utility located in and serving southern Connecticut, has requested the installation of the subsea tap at this time due to the costs and risks of installing a "hot" sales tap after Iroquois' construction of the Long Island Sound crossing marine pipeline is completed. At this time, United Illuminating has not yet contracted for a gas supply or for service on Iroquois, but anticipates that it will secure a gas supply and will request authorization to provide service to its Bridgeport Harbor generating station from Iroquois in the near future.

United Illuminating has agreed to reimburse Iroquois for the cost of the sales tap which is estimated to cost \$319,000. The sales tap is to be located at the twelve mile point on the Long Island Sound crossing. It is anticipated that service through this sales tap, estimated at 70,000 to 80,000 Mcf per day, will be made on an interruptible basis pursuant to Iroquois' Rate Schedule ITS-2. Iroquois states that since service through this sales tap will be offered primarily on an interruptible basis, it will not impact its peak day delivery volumes.

In addition, Iroquois requests a waiver of § 157.206(f) of the Commission's Regulations requiring that facilities constructed under the prior notice provisions be completed and in actual operation within one year of the date of authorization. Iroquois insists that this waiver is necessary because United Illuminating will require more than one year to complete the following: (1) Convert its Bridgeport Harbor generating station from oil fired to gas fired, (2) contract for a gas supply, and (3) secure all necessary regulatory approvals, including authorization to construct a lateral from the proposed tap to its Bridgeport Harbor generating station. Waiver of this requirement will allow Iroquois to construct the proposed tap as part of its initial subsea mainline construction, thus avoiding the additional costs and risks of installing a "hot" tap on an operating undersea natural gas pipeline that may make it infeasible for Iroquois to install the tap in the future.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

#### 18. Natural Gas Pipeline Co. of America, Stingray Pipeline Co., Florida Gas Transmission Co., Transwestern Pipeline Co., and Colorado Interstate Gas Co.

[Docket Nos. CP91-973-000, CP91-974-000, CP91-975-000, CP91-976-000, CP91-977-000]

January 25, 1991.

Take notice that on January 22, 1991, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.<sup>6</sup>

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicants and is included in the attached appendix.

The Applicants also state that they would provide the service for each shipper under an executed transportation agreement, and that Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>6</sup>These prior notice requests are not consolidated.

| Docket number | Applicant  | Shipper name                   | Peak day <sup>1</sup><br>average, annual | Points of   |   | Start up date rate<br>schedule | Related <sup>2</sup> dockets |
|---------------|--|--------------------------------|--|---|---|--------------------------------|------------------------------|
|               |  |                                |  | Receipt   | Delivery                                    |                                |                              |
| CP91-973-000  | Natural Gas Pipeline Company of America, 701 East 22nd St., Lombard, IL 60148. | Eagle Natural Gas Company.     | 16,650<br>5,000<br>1,825,000             | AK, LA, CO, MO, IA, NE, IL, NM, KS, TX, Off LA, Off TX. | LA, CO, TX, NM, IA, IL, OK, Off LA, Off TX. | 11-14-90, ITS .....            | CP86-582-000, ST91-5746-000. |
| CP91-974-000  | Stingray Pipeline Company, 701 East 22nd St., Lombard, IL 60148.               | Vesta Energy Company.          | 50,000<br>25,000<br>8,125,000            | LA, Off LA, Off TX .....                                | LA, Off LA .....                            | 11-21-90, ITS .....            | RP89-70-000, ST91-5747-000.  |
| CP91-975-000  | Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.           | Coastal Gas Marketing Company. | 400,000<br>300,000<br>146,000,000        | TX, AL, LA, FL, MS, Off TX, Off LA.                     | TX, LA, MS, AL, FL.                         | 12-1-90, ITS-1 .....           | CP89-555-000, ST91-1437-000. |

| Docket number | Applicant   | Shipper name                                      | Peak day <sup>1</sup><br>average, annual | Points of           |          | Start up date rate<br>schedule | Related <sup>2</sup> docket     |
|---------------|---|---|--|---------------------|----------|--------------------------------|---------------------------------|
|               |   |   |  | Receipt             | Delivery |                                |                                 |
| CP91-976-000  | Transwestern Pipeline Company, 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188. | Williams Gas Marketing Company.                   | 50,000<br>37,500<br>18,250,000           | AZ, NM, OK, TX..... | NM.....  | 12-20-90, ITS-1.....           | CP88-133-000,<br>ST91-6278-000. |
| CP91-977-000  | Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Co 80944.           | Western Natural Gas and Transmission Corporation. | <sup>3</sup> 1,000<br>500<br>182,000     | CO, WY.....         | CO.....  | 10-5-90, IT-1.....             | CP86-589-000,<br>ST91-2918-000. |

<sup>1</sup> Quantities are shown in MMBtu unless otherwise indicated.

<sup>2</sup> The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

<sup>3</sup> Volumes in Mcf.

**19. Texas Eastern Transmission Corp., Columbia Gas Transmission Corp., and Columbia Gas Transmission Corp.**

[Docket Nos. CP91-996-000,<sup>7</sup> CP91-997-000, and CP91-998-000]

January 25, 1991.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for

<sup>7</sup> These prior notice requests are not consolidated.

authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of

the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number<br>(date filed) | Applicant  | Shipper name                           | Peak day <sup>1</sup><br>average, annual | Points of <sup>2</sup>   |   | Start up date rate<br>schedule | Related <sup>3</sup> docket     |
|-------------------------------|--|--|--|--|---|--------------------------------|---------------------------------|
|                               |  |  |  | Receipt  | Delivery                                |                                |                                 |
| CP91-996-000<br>(1-23-91)     | Texas Gas Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056-5310.                | Amerada Hess Corporation.              | 350,000<br>350,000<br>127,750,000        | OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV. | LA, TX, AR, IL, TN, OH, PA, NJ, NY.     | 09-25-90, IT-1.....            | ST91-6527-000,<br>CP88-136-000. |
| CP91-997-000<br>(1-23-90)     | Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314. | Catamount Natural Gas, Inc..           | 50,000<br>40,000<br>18,250,000           | KY, OH, WV, PA, NY, VA, MD.                                      | MD, KY.....                             | 12-14-90, ITS.....             | ST91-6313-000,<br>CP86-240-000. |
| CP91-998-000<br>(1-23-90)     | Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314. | Equitable Resources Marketing Company. | 400,000<br>320,000<br>146,000,000        | KY, OH, WV, PA, NY.  | KY, MD, OH, PA, VA, NY, DE, WV, DC, NJ. | 12-01-90, ITS.....             | ST91-6001-000,<br>CP86-240-000. |

<sup>1</sup> Quantities are shown in MMBtu except for Williston Basin Interstate Pipeline Company which is shown in dt.

<sup>2</sup> Offshore Louisiana is shown as OLA

<sup>3</sup> The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**20. CNG Transmission Corp.**

[Docket No. CP91-969-000]

January 25, 1991.

Take notice that on January 18, 1991, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, (CNG) filed in Docket No. CP91-969-000 an application pursuant to section 7 of the Natural Gas Act, for an order (1) granting the necessary certificate authorization to permit CNG to assign part of CNG's firm sales entitlements on Tennessee Gas Pipeline Company (Tennessee) to certain of CNG's sales customers, or to assign part of CNG's firm transportation rights on Tennessee to these CNG sales customers, upon CNG's exercise of its conversion rights on Tennessee; and (2) approving the abandonment of a part of the sales service currently rendered by CNG to these customers; all as more fully described in this application which is on file with the Commission and open to public inspection.

CNG states that it has agreed to assign part of its firm transportation capacity on Tennessee to the following customers who would be new Rate Schedule ACD customers upon approval of CNG's pending rate case settlement: Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, New York State Electric and Gas Corporation, The East Ohio Gas Company, The Peoples Natural Gas Company, Hope Gas, Inc., and Corning Natural Gas Corporation. CNG states that it also agreed to assign Tennessee capacity to a Rate Schedule CD customer, Baltimore Gas and Electric Company.

CNG proposes to assign to its customers a total of 266,815 Dt per day and 97,387,475 Dt annually of CNG's firm sales or firm transportation entitlements on Tennessee, as requested by CNG's customers. Because CNG does not currently have firm transportation rights on Tennessee, CNG states that it would first convert and then assign transportation entitlements if customers request transportation rights. CNG states that any assignment of the sales or transportation entitlements would be under the same terms and conditions as CNG receives the service. CNG states that customers receiving the assignment would then convert corresponding quantities on CNG into firm transportation. CNG further requests authorization to make the assignment and abandon Rate Schedule ACD sales service for the converted quantities.

CNG states that the permanent assignments of firm sales or firm transportation entitlements would permit the restructuring of services to

CNG's customers. CNG states that the abandonment authorization for the sales service is necessary for CNG to effect the assignment to its customers and their conversion on CNG.

*Comment date:* February 15, 1991, in accordance with Standard Paragraph F at the end of the notice.

**21. Transcontinental Gas Pipe Line Corp., Southern Natural Gas Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., Florida Gas Transmission Co., ANR Pipeline Co., Florida Gas Transmission Co., Southern Natural Gas Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., ANR Pipeline Co., Texas Eastern Transmission Corp., Southern Natural Gas Co., Mobile Bay Pipeline Projects**

[Docket No. CP89-523-001, CP87-415-003, CP88-437-001, CP89-464-002, CP89-511-001, CP89-512-001, CP89-513-001 and CP88-570-005]

January 25, 1991.

Take notice that on January 15, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1398, Houston, Texas 77251, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston, Texas 77056-5310, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 (Applicants), filed an amended application in Docket No. CP89-523-001 to amend the currently pending application in Docket No. CP89-523-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

As part of a settlement (submitted pursuant to rule 602 of the Commission's Rules of Practice and Procedure) filed in the above listed application, Applicants would alter the original proposal to: Include FGT, Southern, Tetco, ANR and Tennessee as joint owners and operators in the Docket No. CP89-523-000 facilities.

Applicants state that this settlement would constitute a finding that this proposal raises no issues of mutual exclusivity as to any other offshore project included in the Mobile Bay open season proceedings and any order herein would resolve all non-environmental issues in Docket No.

CP89-523-001 and request the authorizing of the following:

(1) Operation of Transco's existing 123.4 mile pipeline pursuant to section 7(c) of the Natural Gas Act (such pipeline is currently being authorized under section 311 of the Natural Gas Policy Act of 1978).

(2) For ANR, Southern, Tennessee and Tetco to acquire ownership interests in the above pipeline, with Transco.

(3) For Transco to construct and operate approximately 0.20 miles of 16-inch pipeline from the tailgate of the Shell Offshore Inc. (Shell) plant, approximately 2.92 miles of 30-inch pipeline from the above 16-inch pipeline (Yellowhammer Spur), to an interconnection with a proposed offshore pipeline in Docket No. CP89-522-002.

(4) A metering and regulation (M&R) station just downstream of the Shell plant.

(5) For ANR, Southern, Tennessee, Tetco and Transco to construct and operate approximately 25,362 horsepower (HP) of compression at milepost 122.58 of the Mobile Bay pipeline, approximately 2.03 miles of 24-inch pipeline from the tailgate of a gas treatment plant to be constructed by Exxon Company U.S.A. Company (Exxon) to the above compressor station, and approximately 18.92 miles of 30-inch pipeline looping from milepost 122.58 to milepost 105.66 on the existing Mobile Bay pipeline.

(6) For FGT to abandon by lease, and for ANR, Southern and Tennessee to acquire, firm capacity of 150 MMcfd, 175 MMcfd and 175 MMcfd, respectively, in a portion of FGT's system west of the FGT-Mobile Bay pipeline interconnect.

(7) For Transco to abandon by lease, and for Tetco to acquire firm capacity of 150 MMcfd in a portion of Transco's system west of the Transco-Mobile Bay pipeline interconnect.

(8) For the exchange of leases, covering 65 MMcfd each of capacity, between FGT and Southern and between FGT and Tennessee; and covering 55 MMcfd between FGT and ANR.

(9) For Southern, Tennessee, ANR and Tetco to include in their respective rate bases as gas plant-in-service the lease payments paid by each to FGT and Transco for such leased capacity, as well as the amounts paid in facility costs.

(10) For the full amounts of Southern's, Tennessee's, Tetco's, ANR's and Transco's investments in the Mobile Bay pipeline, plus the full amount of each party's investment in the facilities to be constructed, and to receive rolled-

in rate treatment in each party's rate base.

Applicants request a separate environmental clearance for the Yellowhammer Spur first, prior to a comprehensive environmental clearance for the balance of the facilities, as more fully described in the application.

Applicants request that issuance of any certificate herein would not have the effect of resolving any issue set forth in the Commission's July 26, 1989, Notice of Proposed Civil Penalty in Docket No. IN89-1-000. Applicants also request that any order issued herein provide that ANR, FGT, Southern, Tetco and Tennessee, under no circumstances, should be exposed to any liability, fine, or penalty that might result from the Notice of Proposed Civil Penalty in Docket No. IN89-1-000. Applicants also request that any order issued herein render moot all issues raised in the

Show Cause Order in Docket No. IN89-1-001, without any liability to Applicants.

*Comment date:* February 15, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

## 22. High Island Offshore System

[Docket Nos. CP91-979-000, CP91-980-000, CP91-981-000 and CP91-982-000]

January 25, 1991.

Take notice that High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509

corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>8</sup>

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>8</sup> These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type)                             | Peak day, average day, annual Mcf | Receipt <sup>1</sup> points | Delivery points | Contract date rate, schedule service type | Related docket, start up date |
|----------------------------|---|-----------------------------------|-----------------------------|-----------------|---|-------------------------------|
| CP91-979-000<br>(1-22-91)  | Eagle Natural Gas Company (Marketer).           | 195,000<br>195,000<br>71,175,000  | OLA, OTX                    | OLA, OTX        | 4-1-90, IT, Interruptible.                | ST91-5544-000,<br>11-21-90.   |
| CP91-980-000<br>(1-22-91)  | Northern Illinois Gas Company (Distributor).    | 300,000<br>300,000<br>109,500,000 | OLA, OTX                    | OLA, OTX        | 4-1-90, IT, Interruptible.                | ST91-5546-000,<br>11-27-90.   |
| CP91-981-000<br>(1-22-91)  | TXG Gas Marketing Company (Marketer).           | 138,000<br>138,000<br>50,370,000  | OLA, OTX                    | OLA, OTX        | 4-1-90, IT, Interruptible.                | ST91-5545-000,<br>11-22-90.   |
| CP91-982-000<br>(1-22-91)  | Pennsylvania Gas & Water Company (Distributor). | 50,000<br>50,000<br>18,250,000    | OTX                         | OLA             | 4-1-90, IT, Interruptible.                | ST91-5543-000,<br>11-27-90.   |

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

## 23. Florida Gas Transmission Co., Florida Gas Transmission Co., Trunkline Gas Co. and Trunkline Gas Co.

[Docket Nos. CP91-985-000, CP91-986-000, CP91-991-000 and CP91-992-000]

January 25, 1991.

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205

and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-555-000 and Docket No. CP89-586-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>8</sup>

Information applicable to each transaction, including the identity of the

<sup>8</sup> These prior notice requests are not consolidated.

shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Shipper name (type)                     | Peak day, average day, annual MMBtu | Receipt points <sup>1</sup> | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|----------------------------|---|-------------------------------------|-----------------------------|-----------------|--|-------------------------------|
| CP91-985-000<br>(1-23-91)  | Chesapeake Utilities Corporation (LDC). | 20,000<br>15,000<br>7,300,000       | Various                     | Various         | 11-30-90, ITS-1, Interruptible.            | ST91-6390-000<br>11-30-90.    |
| CP-91-986-000<br>(1-23-91) | LL&E Gas Marketing, Inc. (Marketer).    | 10,000<br>7,500<br>3,650,000        | Various                     | Mississippi     | 11-27-90, ITS-1, Interruptible.            | ST91-6419-000<br>12-13-90.    |
| CP91-991-000<br>(1-23-91)  | Vesta Energy Corporation (Marketer).    | 100,000<br>100,000<br>36,500,000    | Various                     | Illinois        | 1-8-90, PT, Interruptible.                 | ST91-6171-000<br>12-1-90.     |

| Docket number (date filed) | Shipper name (type)                | Peak day, average day, annual MMBtu | Receipt points <sup>1</sup> | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|----------------------------|------------------------------------|-------------------------------------|-----------------------------|-----------------|--|-------------------------------|
| CP91-992-000<br>(1-23-91)  | Enserch Gas Company<br>(Marketer). | 50,000<br>50,000<br>18,250,000      | Various .....               | Illinois .....  | 11-19-90, PT,<br>Interruptible.            | ST91-6174-000<br>12-1-90.     |

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA and OTX.

#### 24. Trunkline Gas Co.

[Docket Nos. CP91-957-000, CP91-958-000, CP91-959-000 and CP91-960-000]

January 25, 1991.

Take notice that on January 17, 1991, Trunkline Gas Company, P. O. Box 1642, Houston, Texas 77251-1642, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to

transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.<sup>10</sup>

A summary of each transportation service which includes the shippers

<sup>10</sup> These prior notice requests are not consolidated.

identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Applicant              | Shipper name                   | Peak day <sup>1</sup> , avg, annual | Points of                         |          | Start up date, rate schedule | Related dockets <sup>2</sup>   |
|----------------------------|------------------------|--------------------------------|-------------------------------------|-----------------------------------|----------|------------------------------|--------------------------------|
|                            |                        |                                |                                     | Receipt                           | Delivery |                              |                                |
| CP91-957-000<br>(1-17-91)  | Trunkline Gas Company. | Broad Street Oil & Gas Co..    | 60,000<br>20,000<br>21,900,000      | Offshore LA & TX, LA, TX, IL, TN. | IL ..... | 11-17-90, PT .....           | CP86-586-000<br>ST91-5590-000. |
| CP91-958-000<br>(1-17-91)  | Trunkline Gas Company. | Howell Gas Management Company. | 50,000<br>20,000<br>700,000         | Offshore LA & TX, LA, TX, IL, TN. | IL ..... | 11-16-90, PT .....           | CP86-586-000<br>ST91-5586-000. |
| CP91-959-000<br>(1-17-91)  | Trunkline Gas Company. | Sunnybrook Transmission, Inc.. | 10,000<br>10,000<br>3,650,000       | Offshore LA & TX, LA, TX, IL, TN. | LA ..... | 11-20-90, PT .....           | CP86-586-000<br>ST91-5598-000. |
| CP91-960-000<br>(1-17-91)  | Trunkline Gas Company. | Tarpon Gas Marketing, Ltd..    | 100,000<br>11,000<br>4,000,000      | Offshore LA & TX, LA, TX, IL, TN. | LA ..... | 11-20-90, PT .....           | CP86-586-000<br>ST91-5588-000. |

<sup>1</sup> Quantities are shown in Mcf unless otherwise indicated.

<sup>2</sup> The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

#### 25. Florida Gas Transmission Co.

[Docket Nos. CP91-964-000 and CP91-965-000]

January 25, 1991.

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for

authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket Nos. CP89-555-000 and RP89-50, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.<sup>11</sup>

Information applicable to each transaction, including the identity of the

<sup>11</sup> These prior notice requests are not consolidated.

shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed)   | Shipper name (type)            | Peak day, average day, annual MMBtu | Receipt points <sup>1</sup>   | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---------------------------|--------------------------------|-------------------------------------|-------------------------------|-----------------|--|-------------------------------|
| CP91-964-000<br>(1-18-91) | Citrus World, Inc. (end user). | 987<br>740<br>360,000               | TX, LA, MS, AL, FL, OLA, OTX. | FL .....        | 11-1-90, PTS-1 .....                       | ST91-6404,<br>11-1-90         |
| CP91-965-000<br>(1-18-91) | City of Starke .....           | 78<br>41<br>15,000                  | TX, LA .....                  | FL .....        | 11-1-90, FTS-1 Firm.                       | ST91-6405,<br>11-1-90         |

<sup>1</sup> Offshore Louisiana and offshore Texas are shown as OLA AND OTX.

**26. Tennessee Gas Pipeline Co.**

[Docket No. CP91-966-000]

January 25, 1991.

Take notice that on January 18, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-966-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide firm transportation service under its blanket certificate issued in Docket No. CP87-115-000, a maximum of 4,444 dekatherms (dt) of natural gas for Procter and Gamble Paper Products Company (Procter), an enduser, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee indicates that service commenced November 16, 1990, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST91-6280 and estimates the volumes transported to be 4,444 dt per day on peak day and average day, and 1,622,060 dt on an annual basis.

Tennessee states that it would transport gas for Procter from receipt points located Offshore Louisiana to a point of delivery in Potter County, Pennsylvania.

*Comment date:* March 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 91-2487 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-035]

**Kentucky West Virginia Gas Co.; Compliance Filing**

January 28, 1991.

Take notice that on January 18, 1991, Kentucky West Virginia Gas Company (Kentucky West), tendered for filing certain revised tariff sheets to Volume No. 3 of its FERC Gas Tariff.

Kentucky West states that the revised tariff sheets were filed in compliance with the Commission's order of December 28, 1990 in Docket No. TQ89-1-46-000 approving a settlement agreement between Kentucky West and certain Rate Schedule GSS-1 customers in Kentucky, with the tariff sheets to become effective January 1, 1991.

Kentucky West states that service of the filing has been made upon each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 91-2489 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-036]

**Kentucky West Virginia Gas Co.; Compliance Filing**

January 28, 1991.

Take notice that on January 18, 1991, Kentucky West Virginia Gas Company (Kentucky West), tendered for filing certain revised tariff sheets to Volume No. 3 of its FERC Gas Tariff.

Kentucky West states that the revised tariff sheets were filed in compliance with the Commission's order of December 21, 1990 in Docket No. TQ89-1-46-000 approving a settlement agreement between Kentucky West and certain Rate Schedule GSS-1 customers in Kentucky, with the tariff sheets to become effective January 1, 1991.

Kentucky West states that service of the filing has been made upon each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 91-2490 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-37-001]

**Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff**

January 28, 1991.

Take notice that on January 23, 1991, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets, to be part of its FERC Gas Tariff:

*Second Revised Volume No. 1*

First Revised Sheet No. 300  
First Revised Sheet No. 301  
First Revised Sheet No. 302  
First Revised Sheet No. 303  
Original Sheet No. 304

*First Revised Volume No. 1-A*

First Revised Sheet No. 601  
First Revised Sheet No. 602

The above sheets were revised to reflect current billing determinants and to update the Indexes of Purchasers and Shippers to Northwest's FERC Gas Tariff, in compliance with the Commission's letter order issued December 24, 1990 in Docket No. TQ91-2-37-000. Northwest has requested an effective date of February 23, 1991 for the tendered sheets.

Northwest states that a copy of this filing is being served on customers referenced above, and on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 91-2491 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-009]

**Sale of Natural Gas; Northern Natural Gas Company, Division of Enron Corp.**

January 22, 1991.

Take notice that on December 17, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Enron Gas Marketing, Inc. (EMG)

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* EGM is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.

(4) *Term of Sale:* January, 1991, through November, 1991, and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:*

*Daily Quantity:* 50,000 MMBtu.

*Estimated Total:* 1.5 Bcf per month.

(6) *Maximum Sales Rate:* \$3.1753.

*Minimum Sales Rate:* \$1.6673.

*Rate to be charged during billing period:* \$3.1753.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2484 Filed 2-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-154-002]

**Tennessee Gas Pipeline Co.; Tariff Filing**

January 28, 1991.

Take notice that on December 7, 1990, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff as follows:

To be effective November 1, 1989

*Original Volume No. 2*

First Revised Sheet No. 448  
First Revised Sheet No. 777  
First Revised Sheet No. 1936  
First Revised Sheet No. 5475

To be effective April 1, 1990

*Original Volume No. 2*

Second Revised Sheet No. 5344

To be effective November 1, 1990

*Original Volume No. 2*

First Revised Sheet No. 412

To be effective December 7, 1990

*Third Revised Volume No. 1*

First Revised Sheet Nos. 450-451

First Revised Sheet Nos. 453-458

First Revised Sheet Nos. 460-461

First Revised Sheet Nos. 463-466

*Second Revised Volume No. 1A*

First Revised Sheet No. 7

First Revised Sheet No. 11

Original Sheet No. 12A

First Revised Sheet No. 18

First Revised Sheet No. 27

Original Sheet Nos. 27A-27B

First Revised Sheet No. 34

First Revised Sheet No. 38

Original Sheet Nos. 38A-38B

First Revised Sheet No. 49-50

First Revised Sheet No. 65

First Revised Sheet Nos. 86-87

First Revised Sheet No. 92

First Revised Sheet No. 101

First Revised Sheet No. 121

First Revised Sheet Nos. 135-137

First Revised Sheet No. 139

Tennessee states that the purpose of this filing is (1) to cancel Rate Schedules T-63, T-65, T-90, T-174, X-45 and X-59 in compliance with the Commission Order issued October 29, 1990, in Docket Nos. CP90-154, CP90-333, and CP90-910, and (2) to update the Index of Purchasers, Index of Annual Quantity Limitations and Index of End-User Quantities to reflect recent changes in contract quantities, effective dates of contracts, rate schedules and new service to customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to

intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 91-2492 Filed 2-1-91; 8:45 am]

BILLING CODE 8717-01-M

[Docket No. ER91-195-000]

### Western Systems Power Pool; Further Extension of Time

January 28, 1991.

On January 15, 1991, the Electricity Consumers Resource Council (ELCON) filed a motion for an extension of time to file a motion to intervene or protest in response to the Commission's Notice of Filing issued January 4, 1991 (58 FR 1001, January 10, 1991), in the above-docketed proceeding. By notice issued January 18, 1991, the date for filing interventions and protests was extended to and including January 30, 1991. By this notice, a further extension of time for all interested parties to file a motion to intervene or protest is granted to and including February 4, 1991.

**Lois D. Cashell,**  
Secretary.

[FR Doc. 91-2485 Filed 2-1-91; 8:45 am]

BILLING CODE 8717-01-M

### Office of Fossil Energy

[FE Docket No. 90-95-NG]

### CanWest Gas Supply U.S.A., Inc.; Order Granting Authorization to Import and/or Export Natural Gas

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of an order granting blanket authorization to import and/or export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CanWest Gas Supply U.S.A., Inc., authorization to import and/or export up to 400 Bcf of natural gas over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 29, 1991.

**Clifford P. Tomaszewski,**

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2551 Filed 2-1-91; 8:45 am]

BILLING CODE 8450-01-M

### FEDERAL COMMUNICATIONS COMMISSION

January 30, 1991.

### Advisory Committee for the 1992 ITU World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (92-WARC Advisory Committee)

The FCC Industry Advisory Committee for the ITU 1992 World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (92-WARC Advisory Committee) will meet between 2 and 4:30 p.m. on Tuesday, February 19, 1991, in room 856 at Commission premises located at 1919 M Street, NW., Washington, DC.

The agenda for this fifth meeting of the Committee will be to receive status reports from each of the informal working groups; to consider further comments to the FCC in Docket No. 89-554; and to plan the continuing work of the Committee.

Information regarding meetings of the Industry Advisory Committee and its five Informal Working Groups, may be obtained twenty-four hours a day, seven days a week, via the Public Access Link (PAL) by dialing the FCC Laboratory Computer at (301) 725-1072.

Designated Federal Official for the Committee is Walda W. Roseman, Office of International Communications, Federal Communications Commission, Washington, DC 20554, (202) 632-0935.

Federal Communications Commission

**Donna R. Searcy,**  
Secretary.

[FR Doc. 91-2564 Filed 2-1-91; 8:45 am]

BILLING CODE 91-2564-M

### Cedarville College, et al.: Applications for New FM Stations

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

| Applicant; City/State  | File No.      | MM Docket No. |
|--|---------------|---------------|
| <b>I.</b>  |               |               |
| A. The Cedarville College; Chillicothe, Ohio.                          | BPED-881214MN | 90-654        |
| B. Ohio University; Chillicothe, Ohio.                                 | BPED-890922MA |               |
| <i>Issue heading and applicants</i>                                    |               |               |
| 1. Comparative—Noncommercial Educational FM, A, B                      |               |               |
| 2. Ultimate, A, B  |               |               |
| <b>II.</b>   |               |               |
| A. Keene State College; Keene, New Hampshire.                          | BPED-880426MP | 90-653        |
| B. Granite State Educational Fellowship, Inc.; Walpole, New Hampshire. | BPED-890321MR |               |
| <i>Issue heading and applicants</i>                                    |               |               |
| 1. 307(b)—Noncommercial Educational FM, A, B                           |               |               |
| 2. Educational Qualifications, B                                       |               |               |
| 3. Contingent Comparative—Noncommercial Educational FM, A, B           |               |               |
| 4. Ultimate, A, B  |               |               |
| <b>III.</b>  |               |               |
| A. Briarwood Presbyterian Church; Birmingham, AL.                      | BPED-870812MC | 90-652        |
| B. The University of Alabama; Birmingham, AL.                          | BPED-880603MA |               |
| <i>Issue heading and applicants</i>                                    |               |               |
| 1. Comparative, A, B   |               |               |
| 2. Ultimate, A, B  |               |               |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding hearings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington DC. The complete text may also be purchased from the

Commission's duplicating contractor,  
International Transcription Services,  
Inc., 2100 M Street, NW., Washington,  
DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,  
Mass Media Bureau.

[FR Doc. 91-2565 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

### Central Florida Communications Group, Inc., et al.: Applications for Consolidated Hearing

1. The Commission has before it the  
following groups of mutually exclusive  
applications for six new FM stations:

| Applicant City/State  | File No.                              | MM<br>Docket<br>No. |
|---|---------------------------------------|---------------------|
| <b>I</b>  |                                       |                     |
| A. Central Florida<br>Communications<br>Group, Inc.; Holly<br>Hill, FL.   | BPH-880505MS                          | 90-633              |
| B. King/Holly Hill,<br>Ltd.; Holly Hill, FL.  | BPH-880505MW                          |                     |
| C. Internart<br>Broadcasting, Inc.;<br>Holly Hill, FL.  | BPH-880505NI                          |                     |
| D. Holly Hill Radio<br>Partners; Holly Hill,<br>FL.   | BPH-880505NQ                          |                     |
| E. John E. Morris and<br>Lawrence R. Baker,<br>d/b/a Morkbak<br>Communications, a<br>General<br>Partnership; Holly<br>Hill, FL. | BPH-880505NV                          |                     |
| F. A. Wayne Atchley;<br>Holly Hill, FL.   | BPH-880505OR                          |                     |
| G. H.B. Broadcasting,<br>Inc.; Holly Hill, FL.  | BPH-880505OU                          |                     |
| H. Walo<br>Broadcasting, Inc.;<br>Holly Hill, FL.   | BPH-880505OZ                          |                     |
| I. Sun City Radio<br>Group, Inc.; Holly<br>Hill, FL.  | BPH-880505PC                          |                     |
| J. Seabreeze<br>Broadcasting<br>Group, Inc.; Holly<br>Hill, FL.   | BPH-880505PE                          |                     |
| K. Julie E. Lubke, d/<br>b/a Modern Media;<br>Holly Hill, FL.   | BPH-880505PJ                          |                     |
| L. Michelle N.<br>Terzynski; Holly<br>Hill, FL.   | BPH-880505PL                          |                     |
| M. Holly Hill<br>Broadcasting Co.,<br>Holly Hill, FL.   | BPH-880505PG<br>(Dismissed<br>Herein) |                     |

#### Issue Heading and Applicants

1. See appendix, I
2. See appendix, I
3. See appendix, I
4. See appendix, E
5. See appendix, E
6. Air Hazard, C,G
7. Comparative, A-L
8. Ultimate, A-L

| Applicant City/State  | File No.                              | MM<br>Docket<br>No. |
|---|---------------------------------------|---------------------|
| A. Oasis Radio<br>Affiliates, Inc.;<br>Baker, LA.                   | BPH-881215MH                          | 90-634              |
| B. AB Partners, Ltd.;<br>Baker, LA.                                 | BPH-881215MI                          |                     |
| C. Kathleen D.<br>Walker; Baker, LA.                                | BPH-881215ML                          |                     |
| D. BEBE-F<br>Broadcasting Corp.;<br>Baker, LA.                      | BPH-881215NE                          |                     |
| E. Baker<br>Communications<br>Partnership; Baker,<br>LA.            | BPH-881215NN                          |                     |
| F. Bear Broadcasting<br>of Louisiana, Inc.;<br>Baker, LA.           | BPH-881215NP                          |                     |
| G. Rupert of East<br>Baton Rouge<br>Broadcasting L.P.<br>Baker, LA. | BPH-881215NQ                          |                     |
| H. RDH<br>Communications,<br>Limited Partnership;<br>Baker, LA.     | BPH-881215NG<br>(herein<br>dismissed) |                     |

#### Issue heading and applicant(s)

1. Air Hazard, E LA
2. Comparative, A-G
3. Ultimate, A-G

### III

| Applicant City/State                       | File No.          | MM<br>Docket<br>No. |
|--|-------------------|---------------------|
| A. Washington<br>Interstate, Kelso,<br>WA. | BPH-881215ME      | 90-631              |
| B. Clare E. Marohn;<br>Kelso, WA.          | BPH-890112MD      |                     |
| C. Armak, Inc.; Kelso,<br>WA.              | BPH-890112MQ      |                     |
| D. Clark R. Harmon;<br>Kelso, WA.          | BPH-<br>890112MXx |                     |

#### Issue heading and applicants

1. Site Availability,
2. Air Hazard, C
3. Comparative, A-D
4. Ultimate, A-D

### IV

| Applicant City/State  | File No.                                       | MM<br>Docket<br>No. |
|---|--|---------------------|
| A. Morning Star<br>Academy; New<br>Durham, NH.                | BPED-<br>880406MO                              | 90-635              |
| B. Capitol City<br>Educational<br>Foundation;<br>Concord, NH. | BPH-880808MN                                   |                     |
| C. Notre Dame<br>College;<br>Manchester, NH.                  | BPED-<br>891018ML                              |                     |
| D. Knowledge For<br>Life; Concord, NH.                        | BPED-89112MF                                   |                     |
| E. Knowledge For<br>Life; Manchester,<br>NH.                  | BPED-<br>890516MJ<br>(previously<br>Dismissed) |                     |

#### Issue heading and applicants

1. (See appendix), C
2. (See appendix), D
3. 307(b)—Noncommercial A through D
4. Comparative Noncommercial, A through D
5. Ultimate, A through D

### V

| Applicant City/State                           | File No.     | MM<br>Docket<br>No. |
|--|--------------|---------------------|
| A. The Mirkwood<br>Group; Brandon,<br>Vermont. | BPH-890412MH | 90-636              |

| Applicant City/State  | File No.                              | MM<br>Docket<br>No. |
|---|---------------------------------------|---------------------|
| B. Bruce M. Lyons;<br>Brandon, Vermont.                         | BPH-890413MD                          |                     |
| C. Carole M. Pickett;<br>Brandon, Vermont.                      | BPH-890413MO                          |                     |
| D. Lewis Creek<br>Broadcasters, Ltd.;<br>Brandon, Vermont.      | BPH-890413NA                          |                     |
| E. Bach 'n Roll Radio<br>of Brandon, Inc.;<br>Brandon, Vermont. | BPH-890413NG                          |                     |
| F. James G.<br>Kirkpatrick;<br>Brandon, Vermont.                | BPH-890413NI                          |                     |
| G. Green Mountain<br>Boys Broadcasting;<br>Brandon, Vermont.    | BPH-890413NM<br>(Herein<br>Dismissed) |                     |

#### Issue heading and applicants

1. Air Hazard, A, B
2. Financial, E
3. Contingent Qualification, B
4. Comparative, A-G
5. Ultimate, A-G

### VI

| Applicant City/State   | File No.          | MM<br>Docket<br>No. |
|--|-------------------|---------------------|
| A. Earlimart<br>Educational<br>Foundation, Inc.;<br>Spokane, WA. | BPED-<br>890123MB | 90-637              |
| B. Perez/FM<br>Educational<br>Foundation, Inc.;<br>Spokane, WA.  | BPED-<br>890123MD |                     |
| C. Melinda Boucher/<br>Read; Spokane,<br>WA.                     | BPH-890123MM      |                     |

#### Issue heading and applicants

1. Air Hazard, A, B
2. Educational Qualifications, A, B
3. Comparative, A, B, C
4. Ultimate, A,B,C

2. Pursuant to section 309(e) of the  
Communications Act of 1934, as  
amended, the above applications have  
been designated for hearing in a  
consolidated proceeding upon the issues  
whose headings are set forth below. The  
text of each of these issues has been  
standardized and is set forth in its  
entirety under the corresponding  
headings at 51 F.R. 19347, May 29, 1986.  
The letter shown before each applicant's  
name, above, is used below to signify  
whether the issue in question applies to  
that particular applicant.

3. If there is any non-standardized  
issue in this proceeding, the full text of  
the issue and the applicants to which it  
applies are set forth in an appendix to  
this Notice. A copy of the complete HDO  
in this proceeding is available for  
inspection and copying during normal  
business hours in the FCC Dockets  
Branch (room 230), 1919 M Street, NW.,  
Washington DC. The complete text may  
also be purchased from the  
Commission's duplicating contractor,  
International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

#### Appendix (Holly Hill, Florida)

1. To determine whether Sunrise Management Services, Inc. is an undisclosed party to the application of I (Sun City).

2. To determine whether I's (Sun City) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether I (Sun City) possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine whether E (Morbak) falsely certified to its financial qualifications in [the Ada, Ohio] proceeding; and if so, whether E (Morbak) is basically qualified to be a Commission Licensee.

5. In light of its other financial obligations to other FM applications, whether E (Morbak) is financially qualified to be a Commission licensee, and if not, whether its Holly Hill application can be granted.

#### Appendix (Concord, New Hampshire)

1. To determine whether C (NDC) is in compliance with the provisions of 47 CFR 73.525.

2. To determine whether D (KFL) is a qualified educational organization proposing an acceptable educational format in compliance with 48 CFR 73.503(a) of the Commission's Rules.

[FR Doc. 91-2566 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

#### Martinsville Community Workshop, Inc., et al: Applications for New FM Stations

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

| Applicant, city/state                                       | File No.      | MM Docket No. |
|---|---------------|---------------|
| <b>I</b>  |               |               |
| A. Martinsville Community Workshop, Inc.; Martinsville, VA. | BPED-860130MG | 90-604        |
| B. Vision Communications, Inc.; Roanoke, VA.                | BPED-880801ME | .....         |

| Applicant, city/state                     | File No. | MM Docket No. |
|---|----------|---------------|
| <i>Issue heading and applicants</i>       |          |               |
| 1. (See appendix), B                      |          |               |
| 2. Financial, B                           |          |               |
| 3. 307(b)-Noncommercial Educational, A, B |          |               |
| 4. Ultimate, A, B                         |          |               |

#### II

|   |               |        |
|---|---------------|--------|
| A. Columbia Bible College Broadcasting Company; Monroe, NC. | BPED-850618ME | 90-607 |
| B. Wingate College; Wingate, NC.                            | BPED-851108MA | .....  |
| C. Inspirational Deliverance Center, Inc.; Monroe, NC.      | BPED-851108MB | .....  |
| <i>Issue heading and applicants</i>                         |               |        |
| 1. Air Hazard, C  |               |        |
| 2. Comparative, A, B, C                                     |               |        |
| 3. Contingent Comparative, A, B, C                          |               |        |
| 4. Ultimate, A, B, C  |               |        |

#### III

|  |               |        |
|--|---------------|--------|
| A. Lakeshore Communications, Inc.; Green Bay, WI.            | BPED-880406MK | 90-606 |
| B. Catholic Diocese of Green Bay (Wisconsin); Green Bay, WI. | BPED-890303MB | .....  |
| C. Cornerstone Community Radio, Inc.; Milladore, WI.         | BPED-890224MA | .....  |

#### Issue Heading and Applicants

- Comparative Noncommercial Educational FM, A, B, C
- Contingent Comparative Noncommercial Educational FM, A, B, C
- Ultimate, A, B, C

#### IV

|   |                                |        |
|---|--------------------------------|--------|
| A. Dorsey Eugene Newman; Hartselle, AL. | BPH-890216MA                   | 90-605 |
| B. FM Radio, Inc.; Hartselle, AL.       | BPH-890217MN                   | .....  |
| C. Carolyn E. McMillan; Hartselle, AL.  | BPH-890217MM                   | .....  |
| D. Dr. Norma J. Fisher; Hartselle, AL.  | BPH-89021MA (Dismissed Herein) | .....  |

#### Issue heading and applicants

- Comparative, A-C
- Ultimate, A-C

#### V

|  |              |        |
|--|--------------|--------|
| A. Thomas A. Rusk; North Little Rock, AR.          | BPH-89020MA  | 90-602 |
| B. Little Rock Radio, Inc.; North Little Rock, AR. | BPH-890209MA | .....  |

| Applicant, city/state   | File No.     | MM Docket No. |
|---|--------------|---------------|
| C. North Little Rock Broadcasting, Ltd.; North Little Rock, AR. | BPH-890209MB |               |
| <i>Issue heading and applicants</i>                             |              |               |
| 1. Comparative, A-C   |              |               |
| 2. Ultimate, A-C  |              |               |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

#### APPENDIX (Martinsville, VA)

##### Additional Issue Paragraph

1. To determine whether B (Vision) is a qualified educational organization as required by 47 CFR 73.503(a).

[FR Doc. 91-2567 Filed 2-1-91; 8:45 am]

BILLING CODE 6712-01-M

#### FEDERAL MARITIME COMMISSION

##### Port Of Longview/Yellowstone Sales Company, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.*: 224-200470.

*Title*: Port of Longview/Yellowstone Sales Company Terminal Agreement.

*Parties*:

Port of Longview (Port).

Yellowstone Sales Company (YSC).

*Filing Party*: T.S.L. Perlman, Attorney for Port of Longview, Fort & Schlefer, 1401 New York Avenue, NW., Washington, DC 20005.

*Synopsis*: The Agreement grants YSC certain preferential use of the Port's Bulk Handling Facility at Longview, Washington. YSC will pay \$78,650 plus certain charges for its use of the facility. The Agreement's initial term expires October 31, 1991 and the Agreement provides for 10 successive 1-year renewal options thereafter.

Dated: January 29, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,  
Secretary.

[FR Doc. 91-2474 Filed 2-1-91; 8:45 am]

BILLING CODE 6730-01-M

**Ocean Freight Forwarder License Revocations; Gehrig, Hoban & Co., Inc., et al.**

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

*License number*: 733

*Name*: Gehrig, Hoban & Company, Inc.  
*Address*: One World Trade Center, Suite 1617, New York, NY 10048

*Date revoked*: December 5, 1990

*Reason*: Failed to furnish a valid surety bond

*License number*: 1031

*Name*: Mario Merjeh dba Merjeh & Co.

*Address*: P.O. Box 561711, Miami, FL 33256

*Date revoked*: December 13, 1990

*Reason*: Surrendered license voluntarily

*License number*: 2966

*Name*: General Traffic Systems, Inc.

*Address*: 175-01 Rockaway Blvd., Jamaica, NY 11434

*Date revoked*: December 17, 1990

*Reason*: Surrendered license voluntarily

*License number*: 1667R

*Name*: Newman, Wilson & Co., Inc.

*Address*: P.O. Box 30419, Portland, OR 97230

*Date revoked*: December 18, 1990

*Reason*: Surrendered license voluntarily

*License number*: 2621

*Name*: Maria A. White dba A-1

Forwarding Company  
*Address*: P.O. Box 60131 AMF, Houston, TX 77205

*Date revoked*: December 19, 1990

*Reason*: Surrendered license voluntarily

*License number*: 2218

*Name*: Beam Forwarding, Incorporated  
*Address*: 1127 Mannheim Road, Suite 216, Westchester, IL 60154

*Date revoked*: December 26, 1990

*Reason*: Surrendered license voluntarily

*License number*: 2199

*Name*: GSC Shipping Corporation

*Address*: One Edgewater Plaza, Staten Island, NY 10305

*Date revoked*: December 26, 1990

*Reason*: Surrendered license voluntarily

*License number*: 2087

*Name*: Livingston International, Inc.

*Address*: 1101 Ellis Avenue, Bensonville, IL 60106

*Date revoked*: December 26, 1990

*Reason*: Surrendered license voluntarily

*License number*: 3323

*Name*: C & Y International, Inc.

*Address*: Columbia Center, 701 5th Avenue, suite 3488, Seattle, WA 98104

*Date revoked*: January 1, 1991

*Reason*: Surrendered license voluntarily

*License number*: 3253

*Name*: International Commerce and Transportation, Inc.

*Address*: 2215 Harbor Blvd., Houston, TX 77020

*Date revoked*: January 3, 1991

*Reason*: Failed to furnish a valid surety bond.

*License number*: 1448R

*Name*: Richard Diaz dba C.A. Mar Freight Forwarding

*Address*: 10380 S.W. 97th Street, Miami, FL 33176

*Date revoked*: January 3, 1991

*Reason*: Failed to furnish a valid surety bond

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 91-2475 Filed 2-1-91; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P1-91]

**Non-Vessel-Operating Common Carrier Bonding Requirements; Petition for Temporary Exemption; Notice**

Notice is hereby given that the British International Freight Association, the Committee of German Seaport Forwarders within the Bundesverband Spedition & Lagerei E.V., the Federal Francaise Des Organisateurs Commissionnaires de Transport and Ocean Links International, USA, Inc. (collectively "Petitioners") have applied for an exemption pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715. Specifically, petitioners seek an order from the Federal Maritime Commission exempting non-vessel operating common carriers ("NVOCCs") from the requirements of the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101-595, section 710 for a period of 60 days from the law's February 14, 1991, effective date.

In addition to commenting on Petitioners' request for exemption, interested persons are also requested to address: (1) Whether the Commission should grant a 60 day exemption solely from the bonding requirements of section 710 of Public Law No. 101-595 because that appears to be the cause of the only immediate problem;<sup>1</sup> and (2) whether the Commission should grant a 60 day exemption from all the requirements of section 710 of Public Law No. 101-595 given the possible linkage between the requirements imposed on NVOCCs and those imposed on common carriers.

Responses shall be submitted no later than February 11, 1991. The abbreviated response period is necessary to enable the Commission to act on the petition or the alternative exemptions proposed prior to the February 14, 1991, effective date. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. For purposes of this matter, the provisions of

<sup>1</sup> In this connection the Commission has also received comments advising of difficulties experienced by U.S. based NVOCCs in obtaining a bond by the statutory deadline.

46 CFR 502.114 pertaining to filing by mail or by courier shall be inapplicable. Filing shall mean physically lodged with the Office of the Secretary. Responses shall also be served on Richard D. Gluck, Robins, Kaplan, Miller & Ceresi, 1220 Nineteenth Street, NW., Suite 700, Washington, DC 20036-2405.

Joseph C. Polking,

Secretary.

[FR Doc. 91-2697 Filed 2-1-91; 8:45 am]

BILLING CODE 6730-01-M

### Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice.

**SUMMARY:** The Federal Maritime Commission advises the public that it has ordered certain ocean carriers in the United States/People's Republic of China trade to report to the Commission, pursuant to section 10002(d) of the Foreign Shipping Practices Act of 1988, section 15 of the Shipping Act of 1984, and section 19(6) of the Merchant Marine Act, 1920, on whether and how laws and practices of the People's Republic of China result in the existence of unfavorable or adverse conditions affecting the operations of U.S.-flag carriers. The Commission now also solicits comments from other interested persons who may be able to provide information relevant to this issue. The information is sought to provide the Commission a basis for determining whether to initiate an investigation under section 10002(c) of the Foreign Shipping Practices Act of 1988 or section 19(1)(b) of the Merchant Marine Act, 1920.

**DATES:** Comments due April 1, 1991.

**ADDRESSES:** Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** Section 10002(b) of the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. App. 1710a(b), authorizes and directs the Federal Maritime Commission ("Commission") to investigate whether any laws, rules, regulations, policies, or practices of foreign governments result in the existence of conditions that adversely affect the operations of

United States carriers in the U.S. oceanborne trade, which conditions do not exist for foreign carriers of that country in the United States. Section 19(1)(b) of the Merchant Marine Act, 1920 ("1920 Act"), *id.* § 876(1)(b), authorizes and directs the Commission to make rules and regulations to adjust or meet general or special conditions unfavorable to shipping in the foreign trade arising from foreign laws, rules or regulations. Section 10002(d) of the FSPA empowers the Commission to require any person, including ocean common carriers, to respond to information requests which the Commission considers necessary or appropriate to further the objectives of that statute. Similarly, section 15 of the Shipping Act of 1984, *id.* part 1714 ("1984 Act"), authorizes the Commission to require common carriers to file special reports pertaining to the business of those common carriers, and section 19(6) of the 1920 Act, *id.* § 876(6), authorizes the Commission to require any person, including any common carrier, to file with the Commission information which the Commission considers necessary or appropriate.

The Commission has accordingly directed ocean common carriers flagged under the laws of United States and the People's Republic of China ("PRC") and engaged in the U.S.-PRC trade ("Trade") to report on the existence and effect of doing-business restrictions and practices of the PRC on the Trade. These issues were addressed by carriers in their responses to the Commission's April 1987 order pursuant to section 15 of the 1984 Act on the subject of PRC restrictive practices in the Trade. While subsequent intergovernmental negotiations resulted in agreements intended to ease or abolish the practices complained of, it appears that those commitments may not have been met nor the issues resolved. The January 10, 1991, letter from Maritime Administrator Warren G. Leback to Commission Chairman Christopher L. Koch, reporting on the December 3-4, 1990, maritime consultations with the PRC, reflects that the restrictive practices in issue are continuing and that a resolution does not appear imminent. The Commission has accordingly required U.S.-flag carriers American President Lines, Ltd., and Sea-Land Service, Inc. ("U.S. Carriers"), and PRC-flag carriers China Ocean Shipping Co. ("COSCO") and China National Foreign Trade Transportation Corporation ("SINOTRANS") to report on the status of the following issues:

#### 1. Full Branch Office Status

The Commission is concerned that U.S. Carriers' branch offices in the PRC are apparently precluded from conducting normal, basic business activities. These include such functions as acceptance of bookings of freight directly from shippers; authentication or issuance of bills of lading; solicitation of shippers for direct tendering of freight; direct collection of ocean freight and charges; remittance of funds; and ancillary services such as freight forwarding and direct contracting of container yard and container freight station operation, trucking and warehousing. It appears that agencies of the PRC, including SINOTRANS, control or perform these activities for the U.S. Carriers, although not for PRC carriers, and that COSCO and SINOTRANS suffer no such restrictions on their offices in the United States.

#### 2. Recognition of Carriers' Tariffs

MARAD reports that the PRC effectively controls the levels of non-PRC carriers' tariffs, and that such carriers, including U.S. Carriers, are thereby prevented from assessing the rates contained in their lawful Commission-filed tariffs for the Trade.

#### 3. Port Service Issues

It is reported that U.S. Carriers are precluded from selecting, purchasing, owning and operating dockside facilities and container handling equipment, and from providing or controlling terminal operations and port services in the PRC. Charges for direct calls at PRC ports by U.S. Carrier feederships have also been alleged to be exorbitant and/or discriminatory.

#### 4. Intermodal and Related Services

U.S. Carriers are allegedly precluded from owning or operating trucking services for their own containers for intermodal transport, or inland container yard and container freight station terminals, or related warehousing activities, and from providing services as a dockside agency, in the PRC.

#### 5. "Doing business" costs

It is also reported that U.S. Carriers are assessed various charges by the PRC in the course of their operations which are exorbitantly high or discriminatorily assessed vis-a-vis COSCO.

The named U.S. and PRC Carriers have been directed to comment on each of these issues, and on any additional conditions in the Trade not enumerated, including efforts by U.S. Carriers to obtain permission to perform these

services or functions or to correct the alleged discriminatory conditions, and the PRC responses to such efforts; the existence and effect of any disadvantage or adversity suffered by U.S. Carriers resulting from said PRC practices and policies; and the existence of or lack of any comparable restrictions on COSCO or other PRC carriers in the United States and the PRC. The Commission has also directly solicited information and reports of further relevant PRC-U.S. communications from the U.S. Department of Transportation and Department of State.

By this Notice, the Commission invites all other interested parties to file information, views and comments with respect to possible adverse or unfavorable conditions created by practices and policies of the PRC. Information received in response to this Notice and the accompanying Order will be used to form the basis for a determination whether further action, including the initiation of a formal investigation under section 10002(c) of the FSPA, or a proceeding under section 19(1)(b) of the 1920 Act, may be warranted. Any interested party may submit such information, views or comments on or before April 1, 1991, by addressing them to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, in an original and fifteen (15) copies.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-2476 Filed 2-1-91; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Community Financial Holding Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 22, 1991.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Community Financial Holding Corp.*, Westmont, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of New Jersey; Westmont, New Jersey.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *National Banc of Commerce Company*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Lavalette State Bank, Lavalette, West Virginia.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oakland Financial Services, Inc.*, Oakland, Iowa; to acquire 20.95 percent of the voting shares of Otoe County Bancorporation, Inc., Lincoln, Nebraska, and thereby indirectly acquire Otoe County Bank and Trust Company, Lincoln, Nebraska.

2. *Southwest Company*, Sidney, Iowa; to acquire 20.95 percent of the voting shares of Otoe County Bancorporation, Inc., Lincoln, Nebraska, and thereby indirectly acquire Otoe County Bank and Trust Company, Lincoln, Nebraska.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *United Community Bancorp, Inc.*, Greenfield, Illinois; to acquire 100 percent of the voting shares of Peoples State Bank of Gillespie, Gillespie, Illinois.

Board of Governors of the Federal Reserve System, January 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2518 Filed 2-1-91; 8:45 am]

BILLING CODE 6210-01-F

### George D. Francklow, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1991.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *George D. Francklow, Jr.*, Houston, Texas; to acquire an additional 4.0 percent (totalling 12.25 percent) of the voting shares of Guardian Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Guardian Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, January 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2519 Filed 2-1-91; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### 23rd National Meeting of the Public Health Conference on Records and Statistics: Meeting

The National Center for Health Statistics (NCHS) of the Centers for Disease Control, announces the following meeting:

*Name:* 23rd National Meeting of the Public Health Conference on Records and Statistics.

*Time and Date:* 9 a.m.-5 p.m., July 15-16, 1991, 9 a.m.-3 p.m., July 17, 1991.

*Place:* Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Status:* Open to the public, limited only by the space available.

Preregistration is recommended; however, there is no registration fee. Information regarding registration may

be obtained from the contact person listed below.

**Purpose:** The theme, "The 1990s: A Decade of Decisions for Vital and Health Statistics," will focus on the interaction between the Nation's health agenda for the coming decade and the health statistics that will be needed to plan and monitor public health programs.

**Matters to be Discussed:** Public health issues covered will be data systems for the Nation's health agenda, assessment of community health, and new concepts for the decade of the 1990s. A broad spectrum of current and future public health concerns will be covered.

**Contact Person for More Information:** Substantive program and registration information for the meeting may be obtained from Nancy G. Hamilton, Public Health Conference on Records and Statistics, Office of Planning and Extramural Programs, NCHS, room 1100, 8525 Belcrest Road, Hyattsville, MD 20782, telephone 301/436-7122 or FTS 436-7122.

Dated: January 28, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination,  
Centers for Disease Control.

[FR Doc. 91-2516 Filed 2-1-91; 8:45 am]

BILLING CODE 4160-18-M

### Food and Drug Administration

[Docket No. 91F-0002]

#### Milliken & Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Milliken & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe expanded use of dibenzylidene sorbitol as a clarifying agent for olefin polymers intended for use in contact with food.

#### FOR FURTHER INFORMATION CONTACT:

Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Milliken & Co., P.O. Box 1927 M-400, Spartanburg, SC 29304, has filed a petition (FAP 1B4241) proposing that the food additive regulations be amended in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe expanded use of dibenzylidene sorbitol as a clarifying agent for olefin polymers, complying

with entries 1.1, 3.1, and 3.2 of § 177.1520(c) (21 CFR 177.1520(c)), intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 28, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-2525 Filed 2-1-91; 8:45 am]

BILLING CODE 4160-01-M

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[AK-964-4230-15, F-14877-B, F-14877-C]

#### Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611(a), will be issued to NANA Regional Corporation, Inc., successor in interest to Koovukmeut Incorporated (also known as Koovukmeut Incorporation) for approximately 3,267 acres. The lands involved are in the vicinity of Kobuk, Alaska within Tps. 20 N., Rs. 9 and 11 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the "Tundra Times". Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 6, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the

requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead, Land Law Examiner, Branch of Doyon/  
Northwest Adjudication.

[FR Doc. 91-2534 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-JA-M

[ES-970-01-4120-14-241A; KYES 43034]

#### Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Emergency Coal Lease Application KYES 43034

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Hearing and Comment Period.

**SUMMARY:** The Bureau of Land Management requests public comments on the fair market value, maximum economic recovery and the environmental assessment of certain coal resources it proposes to offer for competitive lease sale. The lands included in Emergency Coal Lease Application KYES 43034 are located in Henderson County (on the old Camp Breckinridge military base), Kentucky and are more particularly described as follows:

Lying west of Whitelick Road and Between John Tapp Road and Highland Creek and being the south east portion of Tract 7-A more particularly described as follows: Beginning at an iron pin (set) in the centerline of John Tapp Road, the original point called "X" on Camp Breckinridge Surface Tract No. 9 and Mineral Tract No. 7-A, with map coordinates of N 487,474.570—E 1,427,8091.620; thence leaving John Tapp Road with the mineral division line of Tract No. 7-A and Tract No. 8 south 2,414.53 feet to an iron pin (set), the original mineral corner called "O"; thence continuing with Tracts No. 7-A and No. 8 west (passing an iron pin set on the east bank of Highland Creek at 3,907.44 feet) 3,962.44 feet to a point in Highland Creek in the Union and Henderson County Line; thence leaving Highland Creek N 44 degrees 25'24" E (passing an iron pin set on the east bank of Highland Creek at 55.00 feet) 4,337.94 feet to an iron pin (set) on the centerline of John Tapp Road; thence with the centerline of John Tapp Road and the northern boundary of Mineral Tract No. 7-A S 53 degrees 34'04" E 1,151.05 feet to the point of beginning. Containing approximately 167 acres in which the Federal Government owns 100% of the mineral estate.

The range of quality of the coal within the proposed lease is as follows:

## Kentucky No. 9 (Springfield) Coal Seam

Recoverable Coal..... 940,000 Tons.

| Proximate analysis (%) | Dry Basis               |
|------------------------|-------------------------|
| Volatile .....         | ? (37.1 from Keystone). |
| Ash .....              | 12.25.                  |
| BTU/lb .....           | 12,392.                 |
| Sulfur .....           | 4.83.                   |
| Fixed Carbon.....      | ? (50.4 from Keystone)  |

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract. In addition, notice is also given that a public hearing will be held on March 6, 1991 on the environmental assessment, the proposed sale, the fair market value, and the maximum economic recovery of the proposed lease tracts.

**DATES:** Written comments must be received on or before March 5, 1991.

**ADDRESSES:** The public hearing will be held on March 6, 1991 at the Days Inn, 2044 U.S. 41 North, Henderson, Kentucky 42420 at 3:30 p.m. in the Henderson Room.

**FOR FURTHER INFORMATION CONTACT:** For more complete data on this tract, please contact Pearl Flaver Tillman at (703) 461-1468 or Ian Senio at (703) 461-1445, at the Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal coal management regulations 43 CFR parts 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management, Eastern States Office, at the above address, in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Eastern States Office, at

the above address, during regular business hours (7:00 a.m. to 5:00 p.m.) Monday through Friday, except Federal holidays. Comments should be sent to the Bureau of Land Management, Eastern States Office, at the above address, and should address, but not necessarily be limited to the following information:

1. The method of mining to be employed in order to obtain maximum economic recovery of the coal;
2. The impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts on the environment; and
3. Methods of determining the fair market value of the coal to be offered.

The coal characteristics given above may or may not change as a result of comments received from the public and changes in market conditions that occur between now and the time at which final economic evaluations are completed.

Robert J. Bainbridge,  
Acting State Director.

[FR Doc. 91-2669 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-GJ-M

[UT-050-4212-08-241A; U-60631]

### Intent To Amend the Henry Mountain Management Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** This Notice of Intent is to advise the public that the Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

**SUMMARY:** The BLM is proposing to amend the Henry Mountain Management Framework Plan which includes public lands in Garfield County, Utah. The purpose of the amendment would be to identify certain lands as suitable for sale to Garfield County for the purpose of a sanitary landfill.

The lands identified for sale comprise 40 acres described as follows:

T. 37 S., R. 11 E., Sec 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Salt Lake Meridian, Utah.

The existing plan does not identify these lands for disposal. However, because of the resource values and public objectives involved, the public interest may well be served by sale of these lands.

For 30 days from the date of the publication of this notice, the BLM will accept comments on this proposal.

Comments on the proposed plan amendment should be sent to Roy Edmonds, 150 East 900 North, Richfield, Utah 84701.

Existing planning documents and information are available at the above address, as well as the Henry Mountain Resource Area Office, 406 South 100 West, Hanksville, Utah 84734, telephone (801) 542-3461.

**FOR FURTHER INFORMATION CONTACT:** Sheldon G. Wimmer, Henry Mountain Resource Area Manager.

Dated: January 28, 1991.

James M. Parker,  
State Director.

[FR Doc. 91-2535 Filed 2-1-91; 8:45 am]

BILLING CODE 4301-DQ-M

[AZ-020-00-4320-12]

### Kingman Resource Area Grazing Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting—Kingman Resource Area Grazing Advisory Board.

**SUMMARY:** The Kingman Resource Area Grazing Advisory Board will hold a meeting on Tuesday, March 5, 1991. The meeting will start at 9 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Discussion of the Kingman Resource Management Plan.
2. Request for Advisory Board Expenditures.
3. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: January 25, 1991.

Henri R. Bisson,  
District Manager.

[FR Doc. 91-2481 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-01-4212-13; IDI-16452, IDI-27112]

**Exchange and Order Providing for Opening of Public Lands; Idaho****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of exchange and opening order.

**SUMMARY:** The United States has issued two exchange conveyance documents as shown below under section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

**EFFECTIVE DATE:** March 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In two exchanges made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

**Boise Meridian**

IDI-16452 (Conveyed to Colyer Cattle Co., Bruneau, Idaho)

T. 6 S., R. 5 E.,

Sec. 11, S $\frac{1}{2}$ SW $\frac{1}{4}$

Sec. 13, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 14, SW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 8 S., R. 1 E.,

Sec. 27, NE $\frac{1}{4}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 34, NE $\frac{1}{4}$ , NE $\frac{1}{2}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

IDI-27112 (Conveyed to Eddie E. Baker, Clayton, Idaho)

T. 9 N., R. 17 E.,

Sec. 1, lot 6;

Sec. 2, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ S E $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

Comprising 705.00 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands;

**Boise Meridian**

IDI-16452 (Acquired from Colyer Cattle Co.)

T. 9 S., R. 3 E.,

Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$ ;

Sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 30, E $\frac{1}{2}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$ .

T. 10 S., R. 2 E.,

Sec. 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 10, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

IDI-27112 (Acquired from Eddie E. Baker)

T. 9 N., R. 17 E.,

Sec. 15, lot 7.

Comprising 720.03 acres of private land.

The purpose of the exchanges was to acquire non-federal lands which have

high public value for inclusion in both the Little Jacks Creek and Jerry Peak West Wilderness Study Areas, riparian habitat, and bighorn sheep and other wildlife habitat. The public interest was well served through completion of both exchanges. The values of both the Federal and non-Federal lands in the Colyer exchange were appraised at \$27,200 each. The value of both the Federal and non-Federal lands in the Baker exchange were appraised at \$5,000 each.

3. At 9 a.m. on March 2, 1991, the reconveyed private lands described in paragraph 2, except those described in paragraph 5, will be opened to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 2, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on March 2, 1991, the reconveyed private lands described in paragraph 2, will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

5. The following-described lands have potential for inclusion in wilderness study areas and, therefore, remain closed to the public land laws.

**Boise Meridian**

T. 9 N., R. 17 E.,

Sec. 15, lot 7.

T. 9 S., R. 3 E.,

Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$ ;

Sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 30, E $\frac{1}{2}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$  (portion north of the jeep trail).

Containing approximately 320.03 acres.

**Jimmie A. Buxton,**

*Acting Deputy State Director for Operations.*

[FR Doc. 91-2522 Filed 2-1-91; 8:45 am]

**BILLING CODE 4310-GG-M**

[ID-942-01-4730-12]

**Idaho: Filing of Plats of Survey; Idaho**

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., January 25, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines, H.E.S. Nos. 109, 133, 270, and 420, and H.E.S. 272, the subdivision of sections 10 and 11, and the survey of Tract 37, T. 11 N., R. 12 E., Boise Meridian, Idaho, Group No. 784, was accepted January 8, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of certain sections, T. 45 N., R. 4 W., Boise Meridian, Idaho, Group No. 760, was accepted January 22, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of certain sections, T. 46 N., R. 5 W., Boise Meridian, Idaho, Group No. 780, was accepted January 22, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: January 25, 1991.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 91-2521 Filed 2-1-91; 8:45 am]

**BILLING CODE 4310-GG-M**

[OR-942-00-4730-12: GP1-096]

**Filing of Plats of Survey: Oregon/ Washington****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

Oregon

T. 22 S., R. 1 W., accepted 12/17/90

T. 1 S., R. 8 W., accepted 11/9/90

T. 2 S., R. 8 W., accepted 11/9/90

Washington

T. 11 N., R. 20 E., accepted 1/18/91 (sheets 1 and 2)

T. 28 N., R. 22 E., accepted 12/21/90

T. 29 N., R. 23 E., accepted 12/21/90

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 25, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-2482 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-33-M

## Fish and Wildlife Service

### Availability of Second Draft Revised Recovery Plan for the Colorado Squawfish (*Ptychocheilus lucius*) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a second Draft Revised Recovery Plan for the Colorado squawfish (*Ptychocheilus lucius*). This endangered species occurs in various locations in the Colorado River

drainage. The Draft Revised Recovery Plan was first made available for public review on July 21, 1989, (54 FR 30616). New information on the status of Colorado squawfish populations has resulted in revision of the recovery objectives addressed in the Recovery Plan. The Service solicits review and comment from the public on this new revision of the Draft Revised Recovery Plan.

**DATES:** Comments on the Draft Revised Recovery Plan must be received on or before March 6, 1991, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the Draft Revised Recovery Plan may obtain a copy by contacting: Chief, Division of Endangered Species and Environmental Contaminants (Mail Stop 60120), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303) 236-7398 or FTS 776-7398. Written comments and materials regarding this Draft Revised Recovery Plan should be sent to the Chief, Endangered Species and Environmental Contaminants, at the mailing address given above. Comments and materials receive are available on request for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Regional Office located at 134 Union Boulevard, suite 440, Lakewood, Colorado 80228.

**FOR FURTHER INFORMATION CONTACT:** Chief, Division of Endangered Species and Environmental Contaminants, at the mailing address given above, (303) 236-7398 or FTS 776-7398.

**SUPPLEMENTARY INFORMATION:** Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting species, and provide initial estimates of time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended, requires that public notice and an opportunity for public review and

comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The Colorado squawfish was listed under the Act as an endangered species on March 11, 1967, (32 FR 40061). The original recovery plan for the Colorado squawfish was approved on March 16, 1978. This is a revision of that document. The draft revision of the Colorado Squawfish Recovery Plan was first made available for public review on July 21, 1989 (54 FR 30616). That draft revision addressed recovery of the Colorado squawfish in two river segments, the Green River basin (including the Yampa and White rivers) and the main stem of the Upper Colorado River. Since that time, new information on the status and potential threats to the species in these river segments and new analyses on the status of the species in the San Juan River have been made available. This, in addition to the continuation of stocking efforts in the lower basin of the Colorado River, has resulted in revision of recovery objectives for the species.

The recovery objectives in the Plan have now been revised to include two additional river areas, the San Juan River in the Upper Colorado River Basin and the Salt or Verde rivers in the Lower Colorado River Basin, as part of the recovery criteria guiding downlisting and delisting of the species. Additionally, some minor revisions of the recovery tasks have been made to conform to the revision of the recovery objectives. Because of these revisions, the Service is once again making the draft revised Colorado squawfish recovery plan available for public review.

### Public Comments Solicited

The Service solicits written comments on the Colorado Squawfish Recovery Plan revision described above. All comments received by the date specified above will be considered prior to approval of the revised plan.

**Authority:** The authority for this action is sec. 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 28, 1991.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 91-2517 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-55-M

**National Park Service****Availability of Plan of Operations and Environmental Assessment, Plugging and Abandonment of the Dunn-McCampbell Well No. 1; Texaco Tana Producing Company, Padre Island National Seashore, Kenedy County, TX.**

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Texaco Tana Producing Company a Plan of Operations for Plugging and Abandonment of the Dunn-McCampbell Well No. 1 located within Padre Island National Seashore, Kenedy County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418; and the Southwest Regional Office, National Park Service, 1120 South St. Francis Drive, room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Dated: January 22, 1991.

John Cook,

Regional Director, Southwest Region.

[FR Doc. 91-2467 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-70-M

**Cape Cod National Seashore South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1 § 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, February 22, 1991.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore. The commission members will meet at Headquarters, Marconi Station, South Wellfleet, Massachusetts, for the regular

business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts, at 10:30 a.m. for the following reasons:

1. Adoption of agenda;
2. Approval of minutes of previous meeting;
3. Old business;
4. New business;
5. Reports of officers;
6. Superintendent's report;
7. Hatches Harbor salt marsh restoration project;
8. Status of Salt Pond House;
9. Discussion of Provincetown Airport Master Plan;
10. Communications/public comments;
11. Agenda for next meeting;
12. Date for next meeting; and
13. Adjournment.

The business meeting is open to the public. It is expected that 15 persons can attend the session in addition to Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: January 24, 1991.

Robert W. McIntosh,

Acting Regional Director.

[FR Doc. 91-2465 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-70-M

**National Register of Historic Places; Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 19, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 19, 1991.

Carol D. Shull,

Chief of Registration, National Register.

**ALABAMA****Lee County**

Summers Plantation, 475 Lee Rd. 181, Opelika vicinity, 91000095

**ARIZONA****Maricopa County**

Skeleton Cave Massacre Site, Address

Restricted, Apache Junction vicinity, 91000100

**FLORIDA****Broward County**

Dillard High School, Old, 1001 NW. Fourth St., Ft. Lauderdale, 91000107

**Hendry County**

Clewiston Inn, US 27 W of jct. with FL 832, Clewiston, 91000106

**Hillsborough County**

Episcopal House of Prayer, 2708 Central Ave., Tampa, 91000105

**ILLINOIS****Champaign County**

New Orpheum Theatre, 346-352 N. Neil St., Champaign, 91000085

**Cumberland County**

Greenup Commercial Historic District, 122 E.-123 W. Cumberland St., 102 N.-203 S. Kentucky St., 101 N. Mill St. and 101 E.-100 W. Illinois St., Greenup, 91000083

**Douglas County**

Streibich Blacksmith Shop, 1 N. Howard St., Newman, 91000086

**Kane County**

St. Charles Municipal Building, 2 E. Main St., St. Charles, 91000087

**Will County**

Joliet Steel Works, 927 Collins St., Joliet, 91000088

**Winnebago County**

Beattie Park Mount Group, N. Main St. between Park and Mound Aves., Rockford, 91000084

**NEW YORK****Chautauqua County**

Lord, Dr. John, House, Forest Rd. Extension, Busti, 91000104

**Dutchess County**

Hiddenhurst, Sheffield Hill Rd. NW of jct. with Sharon Station Rd., Millerton, 91000102

Rosenlund Estate Buildings, Jct. of NY 9 and Beck Pl., Poughkeepsie, 91000101

**Rockland County**

Haddock's Hall, 300 Ferdon Ave., Piermont, 91000103

**NORTH CAROLINA****Mecklenburg County**

Hodges, Eugene Wilson, Farm (Rural Mecklenburg County MPS), 2900 Rocky River Church Rd., Charlotte vicinity, 91000077

McElroy, Samuel J., House (Rural Mecklenburg County MPS), 10915 Beatties Ford Rd., Huntersville vicinity, 91000078

McKinney, John Washington, House (Rural Mecklenburg County MPS), 7332 Providence Rd. W., Charlotte vicinity, 91000079

*Morris, Green, Farm (Rural Mecklenburg County MPS), W side of NC 3628 approx. 1 mi. S. of jct. with Providence Rd. W., Charlotte vicinity, 91000080*

*Ramah Presbyterian Church and Cemetery (Rural Mecklenburg County MPS), NC 2439 .3 mi. N of jct. with MC 2426, Huntersville vicinity, 91000081*

*St. Mark's Episcopal Church (Boundary Increase), S side NC 2004 E of jct. with NC 2074, Huntersville vicinity, 91000076*

*Steele Creek Presbyterian Church and Cemetery (Rural Mecklenburg County MPS), 7407 Steele Creek Rd., Charlotte vicinity, 91000082*

## PENNSYLVANIA

### Clinton County

*Packer, Isaac A., Farm, Farrandsville Rd. along W. Branch of the Susquehanna R., Woodward Township, Lock Haven vicinity, 91000092*

### Greene County

*Heasley, Charles Grant, House, 75 Sherman Ave., Bonar Addition, Franklin Township, Waynesburg, 91000091*

### Huntingdon County

*Rockhill Iron and Coal Company, Rockhill Furnace No. II, 5 mi. S of PA 994 bridge between Orbisonia and Rockhill, Rockhill Borough, Cronwell Township, Rockhill, 91000094*

### Juniata County

*Broman, Andreas, Johanna, Anna and Frank E., Farmstead, Off Co. Rd. 8 between Swan Lake and Kasota Lake, Kandiyohi Township, Kandiyohi vicinity, 91000098*

### Philadelphia County

*Brewerytown Historic District, Roughly bounded by 30th St., Girard Ave., 32nd St. and Glenwood Ave., Philadelphia, 91000096*  
*West Diamond Street Townhouse Historic District, 3008—3148, 3011—3215 Diamond St., Philadelphia, 91000097*

### Tioga County

*Robinson, Jesse, House, 141 Main St., Wellsboro, 91000089*

### York County

*Ashley and Bailey Company Silk Mill, 1237 W. Princess St., West York Borough, 91000090*  
*Strickler Family Farmhouse, 1205 Williams Rd., Springettsbury Township, York, 91000093*

## VIRGINIA

### Covington Independent City

*Covington Historic District, Roughly bounded by the Jackson R., Monroe Ave., CSX RR tracks, and Maple Ave., Covington, 91000099*

[FR Doc. 91-2486 Filed 2-1-91; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31765<sup>1</sup>]

### Puget Sound & Cascade Railroad Co.—Operation Exemption—in Lewis and Pierce Counties, WA: Exemption

Puget Sound & Cascade Railroad Co. (PS&C), a noncarrier, filed a notice of exemption to operate 80.8 miles of track: (1) A segment owned by Chehalis Western Railroad (CW), a private railroad subsidiary of Weyerhaeuser Corporation, between milepost 0.0, at or near Tacoma, and milepost 14, at or near Graham, in Pierce County, WA; (2) a segment owned by the City of Tacoma, WA (City), between milepost 14, at or near Graham, in Pierce County, and milepost 65, at or near Morton, in Lewis County, WA;<sup>2</sup> and (3) a segment owned by CW, between milepost 0.0, at or near Frederickson Junction, and milepost 15.8, at or near McKenna, in Pierce County. PS&C was organized by the principals of the Mount Rainier Scenic Railroad, a tourist excursion railroad that conducts passenger operations over a portion of the track. PS&C will become a class III rail carrier and might interchange traffic with Union Pacific Railroad, Burlington Northern Railroad Company, and Tacoma Municipal Belt Line Railway at Tacoma. Consummation of the transaction is expected within 45 to 60 days after January 1, 1991.<sup>3</sup>

Any comments must be filed with the Commission and served on: Jack A. Anderson, Puget Sound & Cascade Railroad Co., P.O. Box 921, Elbe, WA 98330.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ad initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 29, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-2539 Filed 2-1-91; 8:45 am]

BILLING CODE 7035-01-M

<sup>1</sup> This proceeding was inadvertently assigned Finance Docket No. 31820 at filing.

<sup>2</sup> CW donated this segment to the City.

<sup>3</sup> The notice of exemption in this proceeding was filed January 7, 1991, and the exemption was effective January 14, 1991. See 49 CFR 1150.32(b).

## DEPARTMENT OF JUSTICE

### Consent Judgment in Action to Enjoin Violation of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States v. The BOC Group, Inc. (formerly Airco, Inc.)*, (D.N.J.), Civil Action No. 90-257MTB was lodged with the United States District Court for the District of New Jersey on January 4, 1991. The Consent Decree provides for penalties for importation of chlorofluorocarbons ("CFCs") into the United States without the requisite consumption allowances and enjoins The BOC, Inc. from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and 40 CFR part 82.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. The BOC Group, Inc.*, D.O.J. Ref. No. 90-5-2-1-1475.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, room 502, Newark, New Jersey; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York, 10278; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$2.50 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-2524 Filed 2-1-91; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to CERCLA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 8, 1991, a proposed Consent Decree in *United States v. Unitor Ships Service, Incorporated*, CV 90 3369 WDK(BX), was submitted for lodging with the Federal District Court for the Central

District of California. The United States filed this action to enforce the Clean Air Act, 42 U.S.C. 7401, *et seq.* (the "Act"), and the Rule to Protect the Stratospheric Ozone, 40 CFR part 82 (1989) (the "Rule"), promulgated thereunder, concerning importation of chlorofluorocarbons ("CFCs"). The Rule implements the United States' commitment under the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol") to restrict the United States' production and consumption of ozone-depleting chemicals by requiring producers and consumers of these substances to limit production and consumption to within the number of "allowances" they hold in a given 12-month control period. The complaint alleges that Unitor violated the Act and the Rule by importing CFCs into the United States during 1989 without acquiring the requisite consumption allowances.

Under the proposed Consent Decree, Unitor will pay \$23,635 in settlement of claims alleged in the complaint seeking penalties for past wrongful importation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Unitor Ships Service, Incorporated*, Case No. CV 90 3389 WDK(BX), DJ # 90-5-2-1-1476.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Central District of California, 1100 United States Courthouse, 312 North Spring Street, Los Angeles, California; (2) the U.S. Environmental Protection Agency, Region IX, 1235 Mission Street San Francisco, California; and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Environment and Natural Resources Division, P.O. 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying

costs totalling \$2.50 (\$0.25 per page) payable to "United States Treasurer."  
Richard B. Stewart,  
Assistant Attorney General, Environment & Natural Resources Division.  
[FR Doc. 91-2540 Filed 2-1-91; 8:45 am]  
BILLING CODE 4410-01-M

#### Antitrust Division

##### Notice Pursuant to the National Cooperative Research Act of 1984—Cigarette Ignition Propensity Joint Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Cigarette Ignition Propensity Joint Venture (the "Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notifications were filed on January 7, 1991. Pursuant to section 6(b) of the Act, the identities of the parties and the general areas of planned activity are given below.

The Joint Venture was formed on December 20, 1990 and is composed of the following six cigarette manufacturers: American Tobacco Company, a Delaware corporation located at 1700 East Putnam Road, Old Greenwich, Connecticut 06870; Brown & Williamson Tobacco Corp., a Delaware corporation located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40232; Liggett Group Inc., a Delaware corporation located at 300 North Duke Street, Durham, North Carolina 27702; Lorillard Tobacco Company, a Delaware corporation located at One Park Avenue, New York, New York 10016; Philip Morris Incorporated, a Virginia corporation located at 120 Park Avenue, New York, New York 10017; and R.J. Reynolds Tobacco Company, a New Jersey corporation located at 401 North Main Street, Winston-Salem, North Carolina 27102.

The Joint Venture will have as its objective the development of a valid and reliable standardized method for measuring cigarette ignition propensity. In addition to developing a laboratory-based test method of measuring cigarette ignition propensity, testing and other research will be required to ensure that the laboratory test provides a

reasonably accurate prediction of the relative fire risk associated with different types of cigarettes in real-world circumstances. The Joint Venture may contract with third parties to perform certain functions.

Joseph H. Widmar,  
Director of Operations, Antitrust Division.  
[FR Doc. 91-2523 Filed 2-1-91; 8:45 am]  
BILLING CODE 4410-01-M

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-09)]

##### NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSAAS); Meeting

**AGENCY:** National Aeronautics and Space Administration.  
**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee (SSAAS).

**DATES:** February 27, 1991, 8 a.m. to 10 p.m.; February 28, 1991, 2 p.m. to 10 p.m.; and March 1, 1991, 8 a.m. to 5 p.m.

**ADDRESSES:** Howard Johnson Plaza Hotel, 2080 North Atlantic Avenue, Cocoa Beach, FL 32931.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. Rhome, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1425).

**SUPPLEMENTARY INFORMATION:** The Space Station Science and Applications Advisory Subcommittee (SSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the results of the Space Station Restructure Study, the inherent restructured station and data handling capabilities, and the utilization plan appropriate to those capabilities. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be open to

the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Type of Meeting:** Open.

#### Agenda

Wednesday, February 27

- 8 a.m.—Opening Remarks.
- 8:30 a.m.—Space Station Freedom (SSF) Restructure Study Results.
- 1 p.m.—Office of Space Science and Applications (OSSA) Assessment of Restructured Station.
- 4:45 p.m.—Discussion on Splinter Group Assignments.
- 7:30 p.m.—Discussion of Restructured Station
- 10 p.m.—Adjourn.

Thursday, February 28

- 2 p.m.—Lay Person SSF Data Management System Briefing.
- 7:30 p.m.—Discussion of Restructured Station and

#### Capabilities and Utilization

- 10 p.m.—Adjourn.
- Thursday, February 28
- 2 p.m.—Lay Person SSF Data Management System Briefing.
  - 7:30 p.m.—Discussion of Restructured Station and

#### Data Handling Capabilities

- 10 p.m.—Adjourn.

Friday, March 1

- 8 a.m.—External Environmental Specification Extravehicular Activity Implications.
- 8:30 a.m.—Small Rapid Response Project Status.
- 9 a.m.—Second International Science Operations Workshop.
- 10 a.m.—Planning for the 1991 SSSAAS Summer Workshop.
- 11 a.m.—OSSA: Fiscal Year 1992 Budget Request and Outlook, and Organizational Changes.
- 12 noon—Splinter Group Reports.
- 1:30 p.m.—Integration and Development of

#### Recommendations

- 4:30 p.m.—Discussion on Action Items.
- 5 p.m.—Adjourn.

Dated: January 29, 1991.

**John W. Gaff,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 91-2553 Filed 2-1-91; 8:45 am]

BILLING CODE 7510-01-M

#### [Notice (91-08)]

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

**DATES:** February 13, 1991, 8:30 a.m. to 5:30 p.m. (to be held at the National Aeronautics and Space Administration); February 14, 1991, 8:30 a.m. to 5:30 p.m. (to be held at the National Council on the Aging); and February 15, 1991, 8:30 a.m. to 3 p.m. (to be held at the National Aeronautics and Space Administration).

**ADDRESSES:** The National Aeronautics and Space Administration, 600 Independence Avenue SW, room 226A, Washington, DC 20546; and the National Council on the Aging, 600 Maryland Avenue SW., room 141, Washington, DC 20024.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss the OSSA program status, Fiscal Year 1992 Budget Request, and future issues. The Committee is chaired by Dr. Berrien Moore and is composed of 27 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Type of Meeting:** Open.

#### Agenda

Wednesday, February 13

- 8:30 a.m.—Introductory Remarks and Committee Business.
- 9:15 a.m.—Overview of Fiscal Year 1992 Budget Request.
- 11:30 a.m.—Overview of Office of Space Science and Applications (OSSA's) Small Missions Programs.
- 1 p.m.—Committee Discussions of

Current and Planned Small Mission Programs.

5:30 p.m.—Adjourn.

Thursday, February 14

- 8:30 a.m.—Committee Discussions of the "Summary and Principal Recommendations of the Advisory Committee on the Future of U.S. Space Program" Report.

1 p.m.—Subcommittee Business.

3 p.m.—Committee Discussions of Plans for the Summer Strategic Planning Workshop.

5:30 p.m.—Adjourn.

Friday, February 15

8:30 a.m.—Writing Groups.

10:30 a.m.—Committee Discussions of Position Statements.

1 p.m.—Committee Discussions with the Associate Administrator for Space Science and Applications.

3 p.m.—Adjourn.

Dated: January 29, 1991.

**John W. Gaff,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 91-2554 Filed 2-1-91; 8:45 am]

BILLING CODE 7510-01-M

#### [Notice (91-07)]

### NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

**DATES:** February 13, 1991, 8:30 a.m. to 5 p.m. and February 14, 1991, 8:30 a.m. to 2 p.m.

**ADDRESSES:** 600 Maryland Avenue, SW., suite 235E, Washington, DC 20024.

#### FOR FURTHER INFORMATION CONTACT:

Dr. W.P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

**SUPPLEMENTARY INFORMATION:** The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is

composed of 15 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 40 persons including committee members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

**TYPE OF MEETING:** Open.

**AGENDA:**

February 13, 1991

8:30 a.m.—Chairman's Remarks.

9 a.m.—Program Status.

Integrated System Preliminary

Design Review (ISPDR).

Budget Outlook.

Restructuring of Space Station Freedom.

11:30 a.m.—Discussion.

1 p.m.—Report of the Advisory Committee on the Future of the U.S. Space Program.

Office of Space Flight Plans.

Space Station Freedom Plans.

2 p.m.—NASA Space Station Freedom Advisory Council Committees.

Space Station Science and

Applications Advisory

Subcommittee.

Aerospace Medicine Advisory Committee.

Space Systems and Technology Advisory Committee.

4 p.m.—Discussion.

5 p.m.—Adjourn.

February 14, 1991

8:30 a.m.—Space Station Advisory Committee Task Group Activities; Verification.

9 a.m.—Committee Work Plans and Membership.

2 p.m.—Adjourn.

Dated: January 2, 1991.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 91-2555 Filed 2-1-91; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Privacy Act of 1974; Transfer of Records

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of transfer of records subject to the Privacy Act to the National Archives.

**SUMMARY:** Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most

provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the *Federal Register*. NARA publishes a notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Trudy Peterson, Assistant Archivist for the National Archives, on (202) 501-5300 or (FTS) 241-5300.

**SUPPLEMENTARY INFORMATION:** In accordance with section (1)(1)(3) of the Privacy Act, archival records transferred from executive branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the *Federal Register* when executive branch systems of records retrievable by personal identifiers are transferred to the National Archives of the United States. After transfer of records retrievable by personal identifiers to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about an individual in any system of records described in a Privacy Act Notice as being part of the National Archives of the United States. Furthermore, records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series.

In this notice, each system is identified by the system name used by the executive branch agency that accumulated the records. That system name is followed by information in parentheses about the National Archives Record Group to which records in the system have been allocated. In the section of the notice covering categories of records in the system, the specific segment of the system transferred to the National Archives is identified by the accession number assigned to the system segment when it was transferred to the National Archives and the series title associated with the system in the National Archives.

The following systems of records, or parts thereof, retrievable by personal identifiers have been transferred to the National Archives since the last notice in 53 FR 27246 (July 19, 1988):

**1. System name:**

Civil Case Files (part of National Archives Record Group 118, Records of U.S. Attorneys and Marshals).

**System location:**

National Archives-Northeast Region, Building 22, Military Ocean Terminal, Bayonne, NJ 07002-5388.

**Categories of individuals covered by the system:**

Records in the National Archives cover individuals who during 1970-1979 in the Eastern District of New York were: (a) Being investigated in anticipation of civil suits; (b) involved in civil suits; (c) defense counsel(s); (d) information sources; (e) relevant to the development of civil suits.

**Categories of records in the system:**

Records in the National Archives covered by this notice are part of Case Files for Significant Cases, 1970-1979 (NARA Accession Numbers 2NN-118-90-019 and 2NN-118-90-020). The files include copies of papers filed in U.S. District Court proceedings, transcripts of testimony and depositions, appeal documents, attorneys' notes, briefs of parties to the case, and correspondence with officials of the Department of Justice.

**Routine uses of records maintained in the system, including categories of users and the purpose of such uses:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

a. Storage: Paper records stored in boxes.

b. Retrievability: Primarily by name of person, case number, complaint number or court docket number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

*Notification procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time.

Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*2. System name:*

Criminal Case Files (part of National Archives Record Group 118, Records of the U.S. Attorneys and Marshals).

*System location:*

National Archives-Northwest Region, Building 22, Military Ocean Terminal, Bayonne, NJ 07002-5388.

*Categories of individuals covered by the system:*

Records in the National Archives cover individuals who during 1970-1979 in the Eastern District of New York were: (a) Charged with violations; (b) being investigated for violations; (c) defense counsel(s); (d) information sources; (e) relevant to development of criminal cases; (f) investigated, but prosecution declined; (g) referred to in potential or actual cases and matters of concern to a U.S. Attorney's Office; (h) placed into the Department's Pretrial Diversion Program.

*Categories of records in the system:*

Records in the National Archives covered by this notice are part of Case Files for Significant Cases, 1970-1979

(NARA Accession Numbers 2NN-118-90-019 and 2NN-118-90-020). The files include copies of papers filed in U.S. District Court proceedings, transcripts of testimony and depositions, appeal documents, attorneys' notes, investigatory files, briefs of parties to the case, and correspondence with officials of the Department of Justice.

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

- a. Storage: Paper records stored in boxes.
- b. Retrievability: Primarily by name of person, case number, complaint number or court docket number.
- c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Notification Procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents,

Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*3. System name:*

Courts-Martial Files (part of National Archives Record Group 153, Records of the Judge Advocate General [Army]).

*System location:*

National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

*Categories of individuals covered by the system:*

Records in the National Archives cover Army personnel tried by courts-martial, 1917-1950.

*Categories of records in the system:*

Records in the National Archives covered by this notice are those in General Courts-Martial Offense Ledgers, 1917-1950, and Ledger of General Courts-Martial Convictions in the American Expeditionary Forces, 1917-1919 (NARA Accession Number NN3-153-90-002).

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

- a. Storage: Bound volumes.
- b. Retrievability: Arranged by fiscal year and thereunder by case number, offense, or name of accused.
- c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC, 20408.

*Notification procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*4. System name:*

Principal Investigator/Proposal File and Associated Records (part of National Archives Record Group 307, Records of the National Science Foundation).

*System location:*

National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Categories of individuals covered by the system:*

Records in the National Archives cover certain persons who received support from the National Science Foundation, either individually or through an academic institution.

*Categories of records in the system:*

Records in the National Archives covered by this notice are Approved Grant and Contract Program Office Files of the Division of Polar Programs. (NARA Accession Number NN3-307-90-001). Documentation in each file includes the name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related information.

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the

general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

a. Storage: Paper records stored in boxes.

b. Retrievability: An individual's name may be used to manually access material in alphabetized hard copy files.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC, 20408.

*Notification procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*5. System name:*

USAINSCOM Investigative Files (part of National Archives Record Group 319, Records of the Army Staff).

*System location:*

National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Categories of individuals covered by the system:*

Records in the National Archives cover individuals who during 1936-1970 were: (a) Military personnel of the U.S. Army; (b) aliens granted limited access authorization to U.S. Defense information; (c) DOD alien personnel investigation for visa purposes, and; (d) individuals about whom there was a reasonable basis to believe that they had engaged in, or planned to engage in, specific adverse activities.

*Categories of records in the system:*

Records in the National Archives covered by this notice include: Security Classified Intelligence and Investigative Dossiers Relating to Individuals and Index to Security Classified Intelligence and Investigative Dossiers (NARA Accession Numbers NN3-319-81-1, NN3-319-82-1, NN3-330-82-8, NN3-319-83-3, NN3-319-84-1, NN3-319-85-1 and 5, NN3-319-87-1, NN3-319-88-9, and NN3-319-90-2). The dossiers contain reports, memorandums, statements, affidavits, lists, cables, and other records accumulated by Army investigative and intelligence activities. The accompanying index includes names of individuals, dates of birth, investigatory case file numbers, reasons for the investigations, and information about the disposition of the cases.

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

a. Storage: Paper records stored in boxes.

b. Retrievability: Files are maintained in alphabetical order by surname of individuals.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Notification procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*6. System name:*

Directorate of Operations Records (part of National Archives Record Group 226, Records of the Office of Strategic Services).

*System location:*

National Archives Building, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Categories of individuals covered by the system:*

Records in the National Archives cover individuals who during 1939-1947 were of foreign intelligence or foreign counterintelligence interest to the CIA.

*Categories of records in the system:*

Records in the National Archives covered by this notice are Miscellaneous Field Files of the Office of Strategic Services, 1939-1947 (NARA Accession Numbers NN3-226-90-001, NN3-226-90-003, and NN3-226-90-005).

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the general public. The records in the

National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

- a. Storage: Paper records in archival containers.
- b. Retrievability: By name.
- c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC, 20408.

*Notification procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

*7. System name:*

Executive Clemency Files (part of National Archives Record Group 204, Records of the Office of the Pardon Attorney).

*System location:*

Archival Projects Branch, Washington

National Records Center, Suitland, MD 20409.

*Categories of individuals covered by the system:*

Records in the National Archives cover individuals who have applied for or been granted executive clemency, 1945-1966.

*Categories of records in the system:*

Records in the National Archives covered by this notice include Reports of the Pardon Attorney, consisting of the "Letter of Advice" furnished to the President on applications for executive clemency, and the Presidential responses, 1945-1966; and the Pardon Attorney Case Files for Robert Stroud, 1963, and Julius and Ethel Rosenberg, 1953. (NARA Accession Numbers NN3-204-90-001 and NN3-204-90-002).

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the statement issued in the appendix following this notice.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

- a. Storage: Paper records stored in boxes.
- b. Retrievability: Information is retrieved by reference to the file number assigned to the name of each applicant for clemency.
- c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Notification Procedures:*

Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:*

Upon request, the National Archives

will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

#### Appendix

##### *General Statement About Uses and Restrictions*

A record from an accessioned system of records may be made available to any person who has applied for and received a researcher identification card. Rules governing the use of records and procedures for applying for research cards are found in 36 CFR part 1254. However, the use of some of the records is subject to restrictions imposed by statute or Executive order, or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the transferring agency. The latter restrictions on access are known as "specific restrictions." Restrictions on access that may apply to more than one record group are termed "general restrictions." They are applicable to the kinds of information or classes of accessioned records designated regardless of the record group to which they have been allocated or the specific system of records they are contained in. The restrictions are published in the *Guide to the National Archives of the United States* and supplemented by restriction statements approved by the Archivist of the United States and set forth in 36 CFR part 1256. Access to records containing information of a highly personal nature which, if disclosed, would invade the privacy of an individual are generally restricted by 36 CFR 1256.16.

Dated: January 28, 1991.

Don W. Wilson,

*Archivist of the United States.*

[FR Doc. 91-2508 Filed 2-1-91; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Public Hearing in Detroit, MI; Aviation Accident

In connection with the investigation of the Northwest Airlines, Flight 299 (a B-727) and Flight 1482 (a DC-9) accident at Detroit, Michigan, December 3, 1990, the National Transportation Safety Board will convene a public hearing at 12 p.m. (eastern standard time), on Monday, March 18, 1991, at the Westin Hotel, in the Mackinac Ballroom, located in the Renaissance Center, Detroit, Michigan 48243. For more information contact Alan Pollock, Office of Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6606.

Dated: January 28, 1991.

Bea Hardesty,

*Federal Register Liaison Officer.*

[FR Doc. 91-2488 Filed 2-1-91; 8:45 am]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

### Consumers Power Company; Withdrawal of Amendment to Facility Operating License

[Docket No. 50-255]

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its April 11, 1990, application for proposed amendment to Provisional Operating License No. DPR-20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would have revised the Technical Specifications Section 3.3.1.b by relaxing for a limited time, the boron concentration required for Safety Injection Tank T-82A. Additionally, a temporary surveillance requirement was proposed to be added to Table 4.2.1, Item 5.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on April 23, 1990 (55 FR 15306). However, by letter dated December 5, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 11, 1990, and the licensee's letter dated December 5, 1990, which withdrew the application for license amendment. The above documents are available for public

inspection at the Commission's Public Document Room, 2120 L Street, the Gelman Building, NW., Washington, DC, and the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland this 18th day of January 1991.

For the Nuclear Regulatory Commission.

Brian Holian,

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-2541 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

### GPU Nuclear Corporation; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 146 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to accommodate implementation of a 21-month operating cycle with a 3-month outage, or a 24-month plant refueling cycle for Technical Specification surveillance intervals which will expire prior to the currently 13R refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on December 27, 1990 (55 FR 53221). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not

have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 17, 1990, as supplemented January 7, 1991, (2) Amendment No. 146 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—1/II.

Dated at Rockville, Maryland this 29th day of January 1991.

For the Nuclear Regulatory Commission,  
Alexander W. Dromerick, Sr.,  
Project Manager, Project Directorate I-4,  
Division of Reactor Projects—1/II, Office of  
Nuclear Reactor Regulation.  
[FR Doc. 91-2542 Filed 2-1-91; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-219]

**GPU Nuclear Corporation; Issuance of Amendment to Provisional Operating License**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 145 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications (TS) by extending the channel calibration interval from 18 to 24 months for TS Items 2.a, 2.d, 3.a, and 3.d of Table 4.15.2. Items 2.a and 2.d provide surveillance requirements for the Main Stack Radioactive Noble Gas monitors and associated effluent flow element. Items 3.a and 3.d provide surveillance requirements for the Turbine Building Ventilation Radioactive Noble Gas monitors and flow element. The surveillance interval supports a 24-month refueling cycle at Oyster Creek.

The application for the amendment complies with the standards and

requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on October 18, 1990 (55 FR 42294). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated September 21, 1990, (2) Amendment No. 145 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and 4 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 28th day of January 1991.

For the Nuclear Regulatory Commission,  
Alexander W. Dromerick, Sr.,  
Project Manager, Project Directorate I-4,  
Division of Reactor Projects—1/II, Office of  
Nuclear Reactor Regulation.  
[FR Doc. 91-2543 Filed 2-1-91; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-328]

**The Tennessee Valley Authority; (Sequoyah Nuclear Plant, Unit 2); Exemption**

**I**

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR-79 which authorizes operation of the Sequoyah Nuclear Plant, Unit 2. This license

provides that, among other things, Unit 2 is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (Commission) now or hereafter in effect.

The Sequoyah Nuclear Plant, Unit 2, is one of the two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

**II**

General Design Criterion (GDC) 52 of appendix A to 10 CFR part 50 requires that each reactor containment be designed so that periodic integrated leakage rate testing can be conducted to assure containment isolation integrity. Section III.D.1(a) of appendix J to 10 CFR part 50 requires that the third Type A test in a 10-year service period shall be conducted when the unit is shut down for the 10-year unit inservice inspection (ISI).

The Type A tests are conducted to measure the primary reactor containment integrated leakage rate. They are also known as the containment integrated leak rate tests. These tests are required by appendix J to assure that the containment leakage following a large break loss-of-coolant accident is less than the maximum allowable leak rate assumed in the accident analysis. In addition to the Type A tests, appendix J requires Type B and Type C tests of leakage through containment penetrations and containment isolation valves to also assure containment integrity during an accident. This requested exemption does not affect the requirements on (1) the Type B and Type C tests in appendix J or (2) the maximum allowed containment leakage rate in appendix J and the Unit 2 Technical Specifications.

The containment is required to be operable when the unit is at reactor system conditions above cold shutdown and refueling. The containment is not required for cold shutdown or refueling.

By letter dated August 31, 1990, the licensee requested an exemption from the Type A testing requirements in section III.D.1(a) of appendix J. This is an exemption from conducting the third Type A test in a 10-year service period during the unit shutdown for the 10-year inservice inspection (ISI). The third Type A test for the first 10-year service period for Unit 2 is scheduled for the Unit 2 Cycle 5 refueling outage in 1992. The licensee contends that, because the 10-year ISI has been extended beyond 1992, the inspection is not required for the Unit 2 Cycle 5 refueling outage and, therefore, must be uncoupled from the third Type A test in each 10-year service period which is required by appendix J.

TVA stated that the third Type A test of the first 10-year service period for Unit 2 is presently scheduled to commence toward the end of the Unit 2 Cycle 5 refueling outage (i.e., May 1992). It intends to conduct the Unit 2 10-year inservice inspection during the Unit 2 Cycle 6 refueling outage (i.e., October-November 1993).

The 10-year ISI is not related to the integrity of the containment pressure boundary. The purpose of the appendix J test program is to ensure that leakage through the primary reactor containment does not exceed allowable leakage rate values. The purpose of the ISI program is to ensure that structural integrity of Class 1, 2, and 3 components is maintained in accordance with ASME Code requirements. Therefore, the proposed separation has no safety consequences because the requirements on containment integrity in appendix J and the Unit 2 Technical Specifications, and on structural integrity of Class 1, 2, and 3 components in the ASME Code are not being changed by the proposed exemption.

The 10-year ISI is scheduled for the Unit 2 Cycle 6 refueling outage in 1993 in accordance with section XI of the American Society of Mechanical Engineers (ASME) Code and with 10 CFR 50.55a(g)(4). The first 10-year ISI for Unit 2 is, therefore, scheduled for a future refueling outage other than the upcoming Unit 2 Cycle 5 refueling outage which is scheduled for 1992. The extension of the 10-year ISI is necessary in order for the plant to accumulate sufficient operating time to conduct the 10-year ISI because of the extended 33-month outage of Unit 2 from 1985 to 1988. In accordance with the provisions of section XI, Article IWA-2400(c), of the ASME Code, the licensee extended the Sequoyah Unit 2 10-year ISI to 1993. (The Unit 1 10-year ISI was extended to 1994 because of the similar extended outage from 1985 to 1988.) The ASME Code allows the 10-year ISI to be postponed if the time the plant has operated is significantly less than the 10-year inspection cycle which is true for Sequoyah because of its extended outage.

The staff has considered the appendix J exemption request for uncoupling the third Type A test of each 10-year service period from the 10-year unit ISI and concludes it is justified on the grounds that the third Type A test within each 10-year service period and the 10-year ISI must be scheduled separately for Unit 2 and the safe operation of Unit 2 does not require that the two tests be conducted in the same outage. The licensee is still required to conduct the

Unit 2 10-year ISI in accordance with section XI of the ASME Code.

### III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are (1) authorized by law, (2) will not present an undue risk to public health and safety, and are (3) consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption—namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the Unit 2 containment will continue to provide a reliable and acceptable means of containment isolation integrity within the leakage requirements of appendix J and the Unit 2 Technical Specifications and the Unit 2 10-year ISI will still be conducted in accordance with the ASME Code.

When appendix J was adopted, the end of the 10-year service period and the 10-year inservice inspection outage were contemplated to be concurrent milestones; however, these milestones are unrelated within the meaning of containment integrity because the 10-year ISI is not conducted to assure containment integrity. The Type A, B, and C tests of appendix J assure containment integrity. The rule did not anticipate extended outages that would extend the 10-year ISI in accordance with the ASME Code. Appendix J requires that the Unit 2 10-year ISI be rescheduled to coincide with the Unit 2 Cycle 5 refueling outage. The 10-year inservice inspection for Unit 2 is currently scheduled for 1993 in accordance with section XI of the ASME Code and 10 CFR 50.55a(g)(4). Performing the 10-year ISI early and concurrent with the third Type A test in a 10-year service period is not necessary to assure containment isolation integrity and would impose a hardship on the licensee with little or no increase in the level of quality or safety at Unit 2.

Accordingly, pursuant to 10 CFR 50.12(a)(2)(ii), the Commission hereby grants an exemption from the requirements of section III.D.1(a) of appendix J to 10 CFR part 50 to the licensee for operation of the Sequoyah Nuclear Plant, Unit 2, as described above. The Commission granted such an exemption for Unit 1 in its letter dated September 29, 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment.

This was noticed in the Federal Register (56 FR 3121, January 28, 1991).

For further details with respect to this action, see the request for exemption dated August 31, 1990, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC., and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of January 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II,  
Office of Nuclear Reactor Regulation.

[FR Doc. 91-2544 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

### Illinois Power Company, et al.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company (IP) and Soyland Power Cooperative, Inc., (the licensee), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

#### Environmental Assessment

##### Identification of Proposed Action

IP, et al., have proposed an amendment to Facility Operating License No. NPF-62 which consists of changes to the Technical Specifications (TS). The amendment would revise the TS to change the conditions for test starting of the diesel generators consistent with the recommendations in NRC Generic Letter 84-15.

This revision of the Clinton Power Station TS would be made in response to the licensees' application for amendment dated October 30, 1987 and revised June 30, 1989.

##### The Need for the Proposed Action

NRC Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," describes methods for emergency Diesel Generator (EDG) testing which, if implemented, would minimize the impact of testing on EDG reliability. These methods include engine prelude, modified or slow starts as applicable, and loading in accordance with vendor recommendations. Prior to licensing, a

footnote was added to section 4.8.1.1.2 of the Clinton TS for the specific purpose of allowing this methodology to be applied to certain EDG surveillance testing. However, this footnote was not made applicable for all required surveillance and subsequently the NRC determined that the wording of the footnote was ambiguous, and that clarification was appropriate.

#### *Environmental Impacts of the Proposed Action*

The proposed changes would allow all diesel test starts required by TS 4.8.1.1.2 to be preceded by engine prelude and/or warmup except for ambient starts required every 184 days.

The Commission has concluded that the proposed amendment does not involve any significant radiological environmental impacts, since the changes it authorizes do not significantly increase the probability or consequences of an accident and do not increase potential radiological releases during normal operations or transients. With regard to nonradiological impacts, the proposed amendment involves systems located within the restricted area as defined in 10 CFR part 20. The proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the staff also concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1, in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on February 18, 1988 (53 FR 4920). No request for hearing or petition for leave to intervene was filed following this notice.

#### *Alternative to the Proposed Action*

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or

greater environmental impacts need not be evaluated.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Clinton Power Station, Unit 1, dated May 1982.

#### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request of October 30, 1987 and did not consult other agencies or persons.

#### *Finding of No Significant Impact*

Based on the findings and conclusions discussed above, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and revised June 30, 1989, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 22nd day of January 1991.

For the Nuclear Regulatory Commission,  
**John N. Hannon,**  
*Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-2545 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-219]

#### **GPU Nuclear Corp. and Jersey Central Power & Light Co.; Availability of Safety Evaluation Report Related to the Full-Term Operating License for Oyster Creek Nuclear Generating Station**

The U.S. Nuclear Regulatory Commission has published its Safety Evaluation Report Related to the Full-Term Operating License for Oyster Creek Nuclear Generating Station, Docket No. 50-219 (NUREG-1382).

Copies of the Report have been placed in the NRC's Public Docket Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and in the Local Public Document Room, Ocean County

Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753, for review by interested persons. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge order by calling 202-275-2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 29th day of January 1991.

For the Nuclear Regulatory Commission  
**Alexander W. Dromerick,**  
*Acting Project Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-2546 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

#### [Docket No. 50-322-OLA-2; ASLBP No. 91-631-03-OLA-2]

#### **Long Island Lighting Co.; Establishment of Atomic Safety and Licensing Board**

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

#### **Long Island Lighting Company**

Shoreham Nuclear Power Station, Unit 1, Facility Operating License No. NPF-82 (Possession Only License)

This Atomic Safety and Licensing Board is being designated pursuant to the provisions of a Memorandum and Order issued by the Commission on January 24, 1991 concerning a request by the Long Island Lighting Company ("LILCO") for an amendment to its license to operate the Shoreham Nuclear Power Station, Unit 1 ("Shoreham") located on Long Island in the State of New York. The amendment would change the license from one which authorizes LILCO to "possess, use, and operate" Shoreham to one which authorizes LILCO to "possess, use but not operate the facility." CLI-91-01, 33 NRC \_\_\_\_\_ (1991).

The Board is comprised of the following administrative judges:  
Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel,  
U.S. Nuclear Regulatory Commission,  
Washington, DC 20555.

George A. Ferguson, 5307 A1 Jones Drive, Columbia Beach, MD 20764.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 28th day of January 1991.

Robert M. Lazo,

*Acting Chief Administration Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 91-2547 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-30175; License No. 42-26900-01; EA 90-218]

**In the Matter of Western Stress, Inc., Houston, TX; Order Modifying License (Effective Immediately)**

**I**

Western Stress, Inc. (Licensee or WSI) is the holder of Byproduct Material License No. 42-26900-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 and 34. The license authorizes the Licensee to possess radioactive iridium-192 and cobalt-60 in the form of sealed sources for use in certain industrial radiography devices and for the purpose of performing industrial radiography. The license, originally issued on October 15, 1987, is due to expire on October 31, 1992.

**II**

On October 5, 1990, the Licensee telephoned NRC's Operations Center in Bethesda, Maryland, to report a radiography incident that occurred in Bordentown, New Jersey. The incident involved the disconnection of a sealed radioactive radiography source from its drive cable. NRC Region I dispatched inspectors to the scene of the incident. On October 5-6, 1990, inspectors observed efforts to recover the disconnected source and interviewed involved personnel in regard to the circumstances surrounding the event. On October 11, 1990, after it had become apparent that the radiographer involved in this incident had received radiation exposures to the whole body and to the hand which were estimated to have exceeded NRC limits, NRC issued a Confirmatory Action Letter to the Licensee confirming the Licensee's commitment to prohibit the radiographer, who also served as WSI's radiation safety officer (RSO) at its Pennsauken, New Jersey, field office, from engaging in licensed activities

pending NRC review of the event. NRC also asked its Office of Investigations (OI) to interview the individuals involved in the October 5 incident. On December 4, 1990, an inspection report was issued and on December 7, 1990, an enforcement conference was conducted with the licensee's corporate RSO to discuss the incident and violations disclosed by NRC's inspection and investigation. During the enforcement conference, the Licensee's RSO stated that WSI would never again permit this radiographer to serve in a supervisory capacity with respect to radiography activities.

NRC's review of this incident indicates that the radiographer committed two violations of NRC radiation safety requirements, at least one of which was willful. The violations directly contributed to the occurrence of radiation overexposures to his whole body and to his right hand. Specifically, on October 5, 1990, following a problem with the radiography equipment and despite encountering some difficulty in turning the hand crank used to return the radiography source to its shielded position, the radiographer failed to perform a confirmatory radiation survey to ensure that the source was in a safe, shielded position, in violation of 10 CFR 34.43(b). In his attempt to resolve the problem, the radiographer, knowing he would have to get close to the source, removed his dosimetry (two pocket dosimeters and TLD badge), in violation of 10 CFR 34.33(a). Only after leaving the immediate area of the source did the radiographer resume wearing his personal radiation dosimetry. Both of these violations occurred despite this radiographer's 17 years of experience and recent refresher training in radiation safety. When questioned about these matters, the radiographer first told the NRC that he didn't know why he removed his dosimetry and that it was not to avoid recording an overexposure. In a subsequent interview on January 10, 1991, the radiographer acknowledged that his original statement to NRC investigators was not true and that he had deliberately removed the dosimetry in order to avoid recording a personal radiation exposure, for the purpose of concealing any radiation exposure to himself, and with the knowledge he was violating NRC requirements.

Had this individual performed the survey required by 10 CFR 34.43(b), he would have realized that the source was not in a shielded position, and he could have initiated source recovery measures without receiving excessive exposures. Based on a reenactment of this incident as described by the radiographer, NRC estimates that he received exposures

significantly in excess of the NRC limits of 3 rems per calendar quarter to the whole body and 18.75 rems per calendar quarter to the extremities.

**III**

Based on the above, the NRC concludes that Licensee employee Roland Dellarciprete, the radiographer involved in the October 5, 1990, incident, willfully violated an NRC requirement that is essential to radiation safety. Specifically, Mr. Dellarciprete, by his own admission, intentionally violated the requirement to wear personal radiation dosimetry. In addition, Mr. Dellarciprete failed to perform the required radiation survey during the incident which occurred on October 5. In view of Mr. Dellarciprete's 17 years experience as a radiographer, his admitted intent to conceal radiation exposure to himself, and his failure to survey, NRC does not have confidence that he will comply in the future with NRC requirements necessary to protect the public health and safety, including his own safety.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations with Mr. Dellarciprete performing unsupervised licensed activities can be conducted under License No. 42-26900-01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety and interest require that License No. 42-26900-01 be modified to prohibit Mr. Roland Dellarciprete from performing radiography as a radiographer or supervising any licensed activities at Western Stress for a period of one year. Furthermore, pursuant to 10 CFR 2.204, I find that the public health, safety and interest require that this order be immediately effective.

**IV**

Accordingly, pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR parts 30 and 34, it is hereby ordered, effective immediately, that license No. 42-26900-01 is modified as follows:

Western Stress, Inc. shall not utilize Mr. Roland Dellarciprete as a radiographer, Radiation Safety Officer, or other supervisor of licensed activities for a period of one year from the date of this Order.

The Regional Administrator, Region IV may, in writing, relax or rescind any of the above conditions upon

demonstration by the Licensee of good cause.

#### V

The Licensee, Mr. Dellarciprete, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing within twenty days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee, Mr. Dellarciprete, or any other person adversely affected relies and the reasons why the Order should not have been issued.

Any answer filed within twenty days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Dellarciprete requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Mr. Dellarciprete, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

#### VI

In the absence of any request for hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further Order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 28th day of January, 1991.

For the Nuclear Regulatory Commission  
**Hugh L. Thompson, Jr.**,  
*Deputy Executive Director for Nuclear  
 Materials Safety, Safeguards and Operations  
 Support.*

[FR Doc. 91-2548 Filed 2-1-91; 8:45 am]

BILLING CODE 7590-01-M

### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Request for Comments Concerning Discrimination Against U.S. Goods and Services by Foreign Governments When Making Procurements

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of request for public comments.

**SUMMARY:** This notice requests written submissions from the public concerning discrimination against U.S. products and services by foreign governments when making government procurements, for use in compiling the annual report on foreign discrimination in government procurement required by Section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit an annual report on the extent to which foreign countries discriminate against United States products or services in making government procurements. In the annual report, the President is required to identify any countries that:

(i) Are Signatories to the GATT (General Agreement on Tariffs and Trade) Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(ii) Are Signatories to the Agreement and are in compliance with the Agreement, but that maintain a significant and persistent pattern or practice of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the U.S. Government; or

(iii) Are not Signatories to the Agreement and maintain a significant and persistent pattern or practice of discrimination in government procurement of products or services from the United States, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the United States Government.

The functions vested in the President under Section 305 of the Trade Agreements Act were delegated to the United States Trade Representative (USTR) pursuant to Section 4-101 of Executive Order 12661 (54 FR 779).

**DATES:** Submissions containing the information described below must be received on or before March 8, 1991.

**ADDRESSES:** Comments, in 20 copies, must be submitted to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, room 517, 600 17th Street, NW., Washington, DC 20506. Until further notice, no packages will be accepted for delivery at the USTR Building. All packages should be delivered to the New Executive Office Building, 725 17th Street, NW., room G-1. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Beverly Vaughan, Director for International Government Procurement, Office of the United States Trade Representative (USTR), 600 17th Street, NW., Washington, DC 20506, (202) 395-3063, Elizabeth Henning, International Economist, USTR, (202) 395-5097, or Sanford Reback, Assistant General Counsel, USTR, (202) 395-7203.

**SUPPLEMENTARY INFORMATION:** Section 305 of the Trade Agreements Act requires the annual report to be submitted on April 30, 1991, and annually thereafter through 1986, unless extended by the Congress, to the appropriate Committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate Committees. The USTR is required to request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices.

In 1990, the first year in which the report was provided for, the Administration determined that no country met the criteria under the statute for identification as a discriminatory country. However, information was separately submitted to the appropriate Congressional committees on seven markets of

particular interest to U.S. industry—the European Community, the Federal Republic of Germany, France, Italy, Japan, Australia, and Greece. In addition, because of Congressional interest in Taiwan, supplementary information was submitted concerning the procurement environment in that market.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to Section 305(d)(5) of the Trade Agreements Act, submissions are sought from any interested parties in the United States and in countries that are Signatories to the Agreement, as well as in other foreign countries whose products or services are acquired in significant amounts by the U.S. Government.

A separate submission is requested for each country identified. Each submission should provide in order the following general information: (1) The party submitting the information; (2) the U.S. products or services that are affected by the non-compliance or discrimination; and (3) the foreign country that is the subject of the submission, and the entities of the government whose practices are being described.

Each submission should provide in order the following specific information on non-compliance with the Agreement or on discrimination: (1) The circumstances under which discrimination has occurred, including information regarding the date and nature of procurement(s) where discrimination was encountered; (2) policies or practices which are deemed to be discriminatory (where possible, include copies of discriminatory laws, policies, or regulations); (3) the extent to which noncompliance with the Code or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government. Wherever possible, submissions should address the extent to which countries identified: (i) Use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures; (ii) conduct what normally would have been one procurement as two or more procurements, in order to decrease the anticipated contract value below the Agreement's value threshold or to make the procurement less attractive to U.S. businesses; (iii) announce procurement

opportunities providing inadequate time for U.S. businesses to submit bids; and, (iv) employ specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements.

Finally, each submission should: (1) Identify requirements of the Agreement which are not being observed by a country identified or describe how the country has maintained in government procurement a significant and persistent pattern or practice of discrimination; (2) identify the specific impact of the discriminatory policy or practice on United States businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons); and (3) describe, if possible, the extent to which the products or services of the country identified are acquired in significant amounts by the U.S. Government.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91-2552 Filed 2-1-91; 8:45 am]

BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28827; File No. SR-Amex-90-26]

### Self-Regulatory Organizations; American Stock Exchange, Inc; Order Partially Approving a Proposed Rule Change Relating to the Pilot Program for Position Limit Exemptions for Hedged Equity Option Positions

On November 28, 1990, The American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to approve on a permanent basis the Exchange's position limit exemption for hedged equity options positions.

The proposed rule change was noticed in Securities Exchange Act Release No. 28692 (December 12, 1990), 55 FR 52114.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1989).

<sup>3</sup> On January 23, 1991, the Amex amended its proposal to extend the pilot program until March 31, 1991. See letter from Ellen Kander, Senior Attorney, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, dated January 23, 1991. Originally, the Amex proposed permanent approval of the pilot program. However, when the pilot program was last extended for six months in August 1990 the Commission noted that it expected the Amex to develop criteria to evaluate further the effectiveness of the pilot and to report

No comments were received on the proposed rule change.

In May 1988, the Commission approved a two-year pilot program by the Amex that provides a limited exemption from applicable equity option position limits.<sup>4</sup> Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500 or 8,000 contracts) based on the number of shares of the underlying security outstanding and/or the underlying security's trading volume.<sup>5</sup> The Amex's pilot program provides an exemption from applicable equity option position limits for accounts which have established one of the four commonly used hedged positions on a limited one-for-one basis, *i.e.*, long stock and short call, long stock and long put, short stock and long call, and short stock and short put. The maximum position established pursuant to the exemption, however, may not exceed twice the present position limit. The exemption also provides that exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the position limit exemption.<sup>6</sup>

During the period that the program has been in operation, the Exchange represents that it has not experienced any significant problems with the implementation of the pilot. Further, customers of Exchange members have found the hedge exemption very useful in offsetting the risk attendant to their stock position.

The Commission finds that the portion of the proposed rule change that would extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.<sup>7</sup> Specifically, the Commission concludes, as it did when approving the commencement of the pilot, that the Amex proposal to provide for increased position and exercise

the results of this evaluation before the pilot expired. See Securities Exchange Act Release No. 28306 (August 2, 1990), 55 FR 32512. The Amex is in the process of finalizing its evaluation. Therefore, in order to avoid a lapse in the effectiveness of the pilot, the Exchange has requested an extension of the pilot until March 31, 1991.

<sup>4</sup> See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201.

<sup>5</sup> See Amex Rule 904, Commentary .09.

<sup>6</sup> See Amex Rule 905.

<sup>7</sup> 15 U.S.C. 78f(6)(5) (1982).

limits for equity options in circumstances where those excess positions are fully hedged with offsetting stock positions will help to provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the portion of the proposed rule (SR-Amex-90-26) that extends the pilot program until March 31, 1991, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Dated: January 28, 1991.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 91-2494 Filed 2-1-91; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, will hold a public meeting at 8:30 a.m. on Tuesday, February 26, 1991, at the Greater Providence Chamber of Commerce, 30 Exchange Terrace, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anthony J. McMahon, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, telephone (401) 528-4580.

Dated: January 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-2513 Filed 2-1-91; 8:45 am]

BILLING CODE 8025-01-M

### Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9 a.m. on Friday February 22, 1991, at the Dallas/Fort Worth International Trade Resource Center, World Trade Center, 2050 Stemmons Freeway, suite 150,

Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, room 3C36, Dallas, Texas 75242, telephone (214) 767-0600.

Dated: January 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-2514 Filed 2-1-91; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 91-007]

#### Coast Guard Academy Advisory Committee

AGENCY: U.S. Coast Guard.

ACTION: Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership of the Coast Guard Academy Advisory Committee. This committee advises the Commandant, U.S. Coast Guard, on the status of the curricula and faculty of the U.S. Coast Guard Academy. The committee consists of seven members who are recognized persons of distinction in the field of education and other fields relating to the purpose of the Academy. The Secretary of Transportation appoints members to serve three-year terms.

**ADDRESSES:** Persons interested in applying should write to Commandant (G-PRF), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. (202-267-1381).

Issued in Washington, DC, on January 29, 1991.

G.D. Passmore,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 91-2588 Filed 2-1-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD 91-008]

#### National Offshore Safety Advisory Committee

AGENCY: U.S. Coast Guard, DOT.

ACTION: Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on the National Offshore Safety Advisory Committee (NOSAC). This committee advises the Secretary of

Transportation on rulemaking matters related to the offshore mineral and energy industries. Four (4) members will be appointed for terms commencing in January 1992.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard.

**DATES:** Requests for applications should be received no later than July 31, 1991.

**ADDRESSES:** Persons interested in applying should write to Commandant (G-MP-4), room 2412, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Pensivy, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 2412, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: January 28, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-2589 Filed 2-1-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD2-91-02]

#### Second Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

**SUMMARY:** On 5 March 1991, the Commander, Second Coast Guard District, will sponsor an Industry Day program to provide for an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. The Industry Day activities will be held at the Adam's Mark Hotel, Fourth and Chesnut Streets, St. Louis, Missouri. The schedule of events for Industry Day is as follows:

*Monday, 4 March*

5-8 pm registration in the hotel lobby for early arrivals.

*Tuesday, 5 March*

7:30 am Registration continues.

8:30 am General Session: Greeting, opening comments, Industry Day comments.

11:30 am Banquet-style luncheon.

1 pm Panel Discussions: Three separate small group panels

<sup>6</sup> 15 U.S.C. 78(b)(2) (1982).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1989).

focusing on the Towing Industry, Shore Side Facilities and Small Passenger Vessel Industry.

4:30 pm Industry Day concludes.

Advance registration and payment of the \$25.00 conference fee which includes the cost of the luncheon is required. Persons desiring registration forms or additional information on the Industry Day activities, including events scheduled by other groups to coincide with Industry Day, should contact one of the offices named below.

Recommendations for discussion topics are encouraged and must be submitted in writing to the officers named below.

All registration forms and topic recommendations must be received by 22 February 1991.

**FOR FURTHER INFORMATION CONTACT:**

Commander John D. Koski or Lieutenant Bruce D. Ward, Commander (mpb), Second Coast Guard District, 1222 Spruce Street, room 2.102G, St. Louis, Missouri, 63103-2832. The telephone numbers are: Commerical (314) 539-2655 and FTS 262-2655.

Dated: January 29, 1991.

W. J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91-2570 Filed 2-1-91; 8:45 am]

BILLING CODE 4910-14-M

**National Highway Traffic Safety Administration**

[Docket No. 91-05-IP-NO. 1]

**General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance**

General Motors Corporation of Warren, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliances with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," and with 49 CFR 571.105, Federal Motor Vehicle Safety Standard No. 105, "Hydraulic Brake Systems," on the basis that these noncompliances are inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.1(d) of Standard No. 105 specifies that an indicator lamp shall be activated when the ignition (start switch is in the "on" (run) position and whenever there is application of the parking brake. Paragraph S5.3.3 of Standard No. 105 requires that the brake indicator lamp shall remain activated as long as the parking brake is applied and the ignition (start) switch is in the "on" position.

Paragraph S5.3.4(a) of Standard No. 101 specifies that means be provided which are capable of making telltales and their identification visible to the driver under all driving conditions. Paragraph S5.4(b) of Standard No. 101 states that telltales shall be displayed at the initiation of any underlying condition. "Telltale" means a display that indicates the actuation of a device, a correct or defective functioning or condition, or a failure to function.

GM produced 14,400 Rivieras and 4,200 Reattas of the 1990 model year which do not comply with the above mentioned requirements of Standard No. 105 and Standard No. 101. The indicator lamp in these vehicles is not activated when the ignition is "on" and the transmission is in "Park" or "Neutral". GM supports its petition for inconsequential noncompliance with the following:

"First, the brake indicator light is displayed as soon as the vehicle is capable of being driven, i.e., as soon as the transmission lever is shifted into reverse or any forward gear. This should have the effect of informing drivers if the parking brake has not been fully released before they proceed. If the parking brake has been firmly applied drivers will also experience obvious drag in both drive and reverse when attempting to move the vehicle.

Second, the vehicles are equipped with "pump-to-set" foot pedal parking brake systems. "Pump-to-set" systems are applied with several strokes, i.e., full application of the park brake system is achieved with approximately two and one half full strokes of the pedal. If the brake indicator lamp does not light when parking brake application has begun and after the transmission selector is placed in "PARK" or "NEUTRAL", drivers might be inclined to pump the pedal an additional time, which would have the desirable effect of assuring that the brake is more fully set.

Third, GM has reviewed its files and has found no owner complaints regarding parking brake telltale operation on the subject Rivieras and Reattas.

Finally, all 1990 Buick Rivieras and Reattas are equipped with automatic transmissions with parking mechanisms which must be engaged before the ignition key can be removed. The vehicles also meet the requirements of FMVSS 105, section 5.2.2.3, viz., that without the parking brake engaged, the transmission parking mechanism will not disengage or fracture in a manner permitting

vehicle movement in a prescribed barrier test. This transmission parking mechanism provides sufficient gradeability so that even if drivers do not fully set the parking brake, the parking mechanism is capable of holding the vehicle on a steep grade.

In summary, GM believes that drivers will be sufficiently alerted to release their parking brake, despite the noncompliance, by the activation of the brake indicator lamp when the vehicle is shifted into gear and by apparent drag when attempting to move the vehicle. Failure of the lamp to activate while drivers are applying the parking brake may prompt them to take additional precautions to assure the parking brake and transmission parking mechanism are engaged."

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: March 6, 1991.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on January 29, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-2495 Filed 2-1-91; 8:45 am]

BILLING CODE 4910-59-M

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

[Supplement to Department Circular—Public Debt Series—No. 2-91]

**Treasury notes, Series W-1993**

Washington, January 24, 1991.

The Secretary announced on January 23, 1991, that the interest rate on the notes designated Series W-1993, described in Department Circular—Public Debt Series—No. 2-91 dated January 17, 1991, will be 7 percent.

Interest on the notes will be payable at the rate of 7 percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 91-2511 Filed 2-1-91; 8:45 am]

BILLING CODE 4810-40-M

**[Supplement to Department Circular—  
Public Debt Series—No. 3-91]**

**Treasury Notes, Series K-1996**

Washington, January 25, 1991.

The Secretary announced on January 24, 1991, that the interest rate on the notes designated Series K-1996, described in Department Circular—Public Debt Series—No. 3-91 dated January 17, 1991, will be 7-½ percent. Interest on the notes will be payable at the rate of 7-½ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 91-2512 Filed 2-1-91; 8:45 am]

BILLING CODE 4810-40-M

# Sunshine Act Meetings

Federal Register

Vol. 56, No. 23

Monday, February 4, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 2:00 p.m., Tuesday, February 26, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2709 Filed 1-31-91; 8:45 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 2:30 p.m., Tuesday, February 26, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Objectives.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2710 Filed 1-31-91; 3:32 pm]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 3:00 p.m., Tuesday, February 26, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule Enforcement Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2711 Filed 1-31-91; 3:32 pm]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Monday, February 11, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2712 Filed 1-31-91; 3:32 pm]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Friday, February 22, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Applications of the Chicago Board of Trade for contract designation in Options on Cash Settled Three Year and Five Year Interest Rate Swap futures

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2713 Filed 1-31-91; 3:32 pm]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Tuesday, February 26, 1991.

**PLACE:** 2033 K St., N.W., Washington, D.C., 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Application of the Twin Cities Board of Trade for contract designation in British Pound and Deutsche Mark Cross Currency Futures

—Application of the Commodity Exchange for contract designation in Gold Asset Participation Futures

—Application of the Chicago Board of Trade for contract designation in Options on Short Term U.S. Treasury Note (Two-Year) Futures

—Application of the MidAmerica Commodity Exchange for contract designation in Options on U.S. Treasury Bond Futures.

—Quarterly Objectives

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, (202) 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 91-2714 Filed 1-31-91; 3:32 pm]

BILLING CODE 6351-01-M

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** Thursday, February 7, 1991 (Times listed below)

**LOCATION:** Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

10:00 a.m.

Closed to the Public  
Sleepwear Enforcement

The staff will brief the Commission on activities related to the enforcement of the sleepwear flammability standards.

2:00 p.m.

Open to the Public  
Art Materials Labeling

The Commission will consider proposed guidelines and criteria for assessing chronic hazards under the Federal Hazardous Substances Act as required by the Labeling of Hazardous Art Materials Act.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492-5709.**

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: January 31, 1991.

Sheldon D. Butts,

*Deputy Secretary.*

[FR Doc. 91-2695 Filed 1-31-91; 2:12 am]

BILLING CODE 6355-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Cancellation of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held on Tuesday, February 5, 1991, at approximately 2:30 p.m. has been canceled.

No earlier notice of this cancellation was practicable.

Dated: January 31, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-2732 Filed 1-31-91; 3:46 pm]

BILLING CODE 6714-01-M

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, January 29, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations relating to assistance agreements with depository institutions.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,645

Vernon Savings and Loan Association,  
Dallas, Texas

Case No. 47,654

First American Bank of Lake Worth,  
National Association, Lake Worth,  
Florida

Application of Central Bank, Meriden, Connecticut, for the Corporation's consent to merge, under its charter and title, with First Central Bank, Hartford, Connecticut, an insured State nonmember bank, and for consent to establish the sole office of First Central Bank as a branch of the resultant institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Chairman L. William Seidman, Mr. Frank Maguire, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Vice Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no

earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: January 30, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-2666 Filed 1-31-91; 1:50 pm]

BILLING CODE 6714-01-M

#### NATIONAL MEDIATION BOARD

**TIME AND DATE:** 2:00 p.m., Wednesday, February 6, 1991.

**PLACE:** Board Hearing Room 8th Floor, 1425 K Street NW., Washington, D.C.

**STATUS:** Open.

##### MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1991.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

##### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

*Date of Notice:* January 28, 1991.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 91-2588 Filed 1-30-91; 4:16 pm]

BILLING CODE 7550-01-M

#### SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the

Securities and Exchange Commission will hold the following meetings during the week of February 4, 1991.

An open meeting will be held on Tuesday, February 5, 1991, at 2:00 p.m., in Room 1C30. A closed meeting will be held on Thursday, February 7, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, February 5, 1991, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss the Commission's proxy rules and other issues relating to proxy solicitations, disclosure and voting. For further information, please contact Catherine Dixon at (202) 272-3097.

The subject matter of the closed meeting scheduled for Thursday, February 7, 1991, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Litigation matter.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Young (202) 272-2300.

Dated: January 29, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-2733 Filed 1-31-91; 3:52 pm]

BILLING CODE 8010-01-M

## Corrections

Federal Register

Vol. 56, No. 23

Monday, February 4, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

### DEPARTMENT OF COMMERCE

#### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

##### *Correction*

In notice document 91-1175 beginning on page 1793, in the issue of Thursday,

January 17, 1991, make the following correction:

On page 1794, in the first column, in the second column of the table, in the third line, "11/03/90." should read "11/03/89-".

BILLING CODE 1505-01-D

### DEPARTMENT OF EDUCATION

#### Training Programs for Educators-Innovative Alcohol Abuse Education Programs

##### *Correction*

In notice document 91-2059 beginning on page 3386 in the issue of Tuesday, January 29, 1991, make the following correction:

On page 3386, in the first column, under **ADDRESSES**, in the fifth and sixth

lines "401-3500" should read "401-3510".

BILLING CODE 1505-01-D

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[UT-942-01-4212-13; U-54864]

#### Issuance of Land Exchange Conveyance Document; Utah

##### *Correction*

In notice document 91-1262 appearing on page 2040, in the issue of Friday, January 18, 1991, in the first column, in the land description, under **Salt Lake Meridian, Utah**, in the second line, "SE $\frac{1}{2}$ NW $\frac{1}{4}$ ;" should read "SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;".

BILLING CODE 1505-01-D

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DEPARTMENT OF CLIMATE  
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DEPARTMENT OF THE ARMY  
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# **federal register**

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Monday  
February 4, 1991

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## **Part II**

### **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 108  
Flight and Cabin Crew Notification  
Administration; Proposed Rule**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 103

[Notice No. 91-2; Docket No. 26459]

RIN2120-AD92

## Flight and Cabin Crew Notification Guidelines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend the Federal Aviation Regulations to implement a statutory requirement for the notification of flight and cabin crewmembers of threats to the security of their flight. The Aviation Security Improvement Act of 1990 amended title III of the Federal Aviation Act of 1958 and directs the Administrator of the FAA to implement guidelines for such notification. The proposed rule is needed to clarify an air carrier's responsibility to disseminate threat information to inflight security coordinators and to establish new requirements to disseminate this information to flight and cabin crewmembers. Air carriers would also be required to provide any evaluation of the threat information and countermeasures to be applied. This action is intended to enhance civil aviation security.

**DATES:** Comments must be received on or before March 6, 1991.

**ADDRESSES:** Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26459, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 26459. Comments may be examined in room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Frederick P. Falcone, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-7296.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire on all matters raised in this proposed rulemaking. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied with cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date of comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26459." The postcard will be date stamped and mailed to the commenter.

**Availability of NPRM**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background***Legislative Mandate*

The Aviation Security Improvement Act of 1990 (the Act), Public Law 101-604, signed into law on November 16, 1990, includes section 109, entitled "Threats to Civil Aviation; Public Notification." Section 109 amends title III of the Federal Aviation Act of 1958 (the FA Act) (49 U.S.C. App. 1341-1358) by adding a new section 321, "Reporting

of Threats to Civil Aviation", which includes, in part, the following under subsection (c), "Notification Guidelines—":

(2) FLIGHT AND CABIN CREW NOTIFICATION GUIDELINES. Not later than 180 days after the date of the enactment of this section, the Administrator shall develop guidelines for ensuring notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

This rulemaking is in response to this legislative mandate and takes into consideration public comments by flight and cabin crew representatives at hearings that have been held on the topic.

*History*

The Act was passed largely in response to the recommendations of the President's Commission on Aviation Security and Terrorism which was established following the destruction of Pan American World Airways Flight 103 (Pan Am 103) over Lockerbie, Scotland, on December 21, 1988. Soon after the investigation into the probable cause of this mid-air disaster began, aviation experts concluded that Pan Am 103 was downed as a result of sabotage. At once the FAA and the international civil aviation community took steps to reduce the public's risk of exposure to such acts in the future.

The FAA initiated several rulemaking proceedings to strengthen the security of all U.S. carriers. For example, on July 6, 1989, the FAA issued a regulation (14 CFR 103.18) (54 FR 28982; July 10, 1989) to provide for the issuance of Security Directives and Information Circulars to enable air carriers and the security community to coordinate more effectively responses to threats against civil aviation. This action simplified and expedited the procedures for disseminating threat information, and helps to ensure that appropriate officials take specific measures to counter terrorism directed at civil aviation. The FAA uses Security Directives to notify U.S. air carriers of specific credible threats. The directives generally contain mandatory countermeasures, and the rule requires air carriers within a specified time to acknowledge receipt of Security Directives and to notify the FAA of how they implemented the countermeasures prescribed by the FAA. Information Circulars, in contrast, are used to notify U.S. air carriers of general situations for which the agency does not prescribe mandatory countermeasures.

Because of the sensitive nature of the information contained in these

documents, both Security Directives and Information Circulars are restricted in their distribution. The FAA has authority to specify the personnel to whom Security Directive information should be distributed; the air carrier retains discretion to determine which additional personnel have an operational need-to-know. Air carriers which receive Security Directives or Information Circulars are specifically forbidden by 14 CFR 108.18(d) to release such information to persons other than those with an operational need-to-know without the prior written consent of the FAA's Director of Civil Aviation Security (now the Assistant Administrator for Civil Aviation Security).

In 1989 the FAA identified and implemented several other initiatives that were especially designed to strengthen security measures at high-risk airports in Europe and the Middle East. Some of these initiatives included the deployment of additional FAA security specialists in the Europe, Africa, and Middle East region; improved procedures for intelligence assessment and dissemination; and issuance of procedures for the detailed examination of selected electronic devices.

Part 108 of the Federal Aviation Regulations (FAR) (title 14 CFR part 108) was promulgated in 1981 (46 FR 3782; January 15, 1981) and requires certain U.S. air carriers to adopt and use FAA-approved security programs to screen passengers and property, control access to airplanes and facilities, and prevent criminal acts against civil aviation. On September 5, 1989, the FAA issued a final rule to amend part 108 of the FAR to require certain U.S. air carriers to use explosives detection systems (EDS's) to screen checked baggage for international flights in accordance with their respective approved security programs (54 FR 36938; September 5, 1989). The notice of proposed rulemaking in that action was issued on July 6, 1989 (54 FR 28985; July 10, 1989).

Against the background of these initiatives, on August 4, 1989, President Bush signed Executive Order 12686 establishing the President's Commission on Aviation Security and Terrorism as part of the continuing investigation of the downing of Pan Am 103. The Commission was chartered " \* \* \* to review and evaluate policy options in connection with aviation security, with particular reference to the destruction on December 21, 1988 of Pan American World Airways Flight 103." In a report issued May 15, 1990, the Commission presented a series of recommendations

intended to improve the aviation security system. Some of the Commission's recommendations directed to the FAA had been adopted by the agency before the Report was issued. Other recommendations have been adopted since then and many were adopted by Congress in the Act.

At about the time the President's Commission was formed, the Secretary of Transportation determined that the formation of a broad-based advisory committee would be in the public interest in connection with the duties imposed upon the FAA by law. Therefore, the Aviation Security Advisory Committee (ASAC), sponsored by the Federal Aviation Administration, was established in September, 1989 (54 FR 39493; September 26, 1989). The committee is composed of representatives from government, the airline industry and the general public, and is responsible for examining all areas of civil aviation security. On a continuing basis, the committee provides the FAA Administrator with recommendations for the improvement of methods, equipment, and procedures that will ensure a high degree of safety to the traveling public.

In October, 1990 ASAC forwarded to the Administrator recommendations addressing credible bomb threats made against U.S. air carriers, foreign air carriers, and airports. ASAC recommended that such threats made against air carriers and airports should be made known to ground security coordinators. ASAC also recommended that in-flight security coordinators should be advised of bomb threats related to their flight assignments and should, in turn, inform other crewmembers of pertinent information. The rule proposed herein would implement these ASAC recommendations.

#### *Security Concerns Related to Threat Dissemination*

The current system for evaluating and responding to threats to civil aviation is founded on the principle that it is best to filter threat information before providing it to aviation security personnel directly responsible for dealing with those threats. There is no regulatory requirement that air carriers share all information involving the range of threats with inflight or ground security coordinators. Nor is there a requirement to provide all threat information to flight and cabin crewmembers, and as a matter of policy and practice, most air carriers do not routinely do so.

Instead, the air carrier's security experts, generally in consultation with the FAA and other government entities,

evaluate threat information against specific FAA-established criteria to determine "specificity" and "credibility." (The terms "specific" and "credible" are not interdependent and are commonly applied by intelligence experts to threat information involving a well defined target and which has been authenticated.) This evaluation process is also used by the FAA in determining when to issue a security directive.

Filtering out those threats which are judged to be groundless or not requiring the application of specific countermeasures is a practical approach, given the hundreds of bogus threats received annually. Filtering out bogus threats is also critical to ensure that real threats are perceived as serious, not diluted in impact by a multiplicity of false alarms. Those threats considered specific and credible in the judgment of the air carrier, using the FAA's criteria, are presented to ground security coordinators, in-flight security coordinators, and others with an operational need-to-know. (As noted above, when the FAA issues a security directive, the agency has authority to specify the personnel to whom the information should be directed.) This limited distribution of threat information helps ensure that obviously bogus threats are filtered out, so that genuine threats can be handled as thoroughly and expeditiously as possible.

The President's Commission, on page 91 of its Report, acknowledged this principle within the context of public notification:

There are few credible threats. Of the 600-700 anonymous aircraft threats received on average annually for the past decade, none resulted in an explosion or the discovery of a bomb. For this reason alone, there is no serious suggestion that travelers should be notified of all threats \* \* \*. A flood of warnings \* \* \* would leave the public unable to distinguish among threats and to identify those that should be taken seriously. Over time, the public would begin to ignore all warnings.

Congress apparently shared this concern since section 109 of the Act requires notification of flight and cabin crews (as well as the public) "in appropriate cases," but not in all cases. In the FAA's view, it is not appropriate to provide notification to flight and cabin crews unless the threat information has been judged by security professionals to be specific and credible. Also on page 91 of its report, the Commission recognized the validity of this principle:

If the proposition is accepted that a threat should be "credible" before notification is considered, the question then becomes how

to determine when a threat is deemed "credible." The Commission believes that this answer must rest with the professionals who analyze threat information—the intelligence and law enforcement communities.

The FAA recognizes that flight crewmembers may desire more information about threats against their particular flight than is deemed specific and credible. It is appropriate, however, that the credibility of threat information should continue to be determined by the security professionals who currently have such responsibility. Once the information is determined to be credible, the FAA's proposed rule would ensure that it is promptly transmitted to crewmembers.

#### *Discussion of the Proposed Rule*

The FAA has found limited reference to the issue of flight and cabin crew notification in the legislative history of the Act published in the Congressional Record, and in the Commission's Report. The primary focus of Congress, and of the President's Commission, was on public notification, not notification of flight and cabin crews. For example, section 109(a) of the Act adds a new Section 321 to the FA Act, "Reporting Threats to Civil Aviation;" subsections 321(c)(1), (d), (e), and (f) all concern Congress' direction to the President to develop guidelines for ensuring notification to the public of threats to civil aviation in appropriate cases.

The flight and cabin crew notification subsection of section 109 appears to be responsive to a statement submitted during Congressional Hearings on the Act by the Air Line Pilots Association (ALPA). ALPA expressed concern about what it believes to be "the lack of timely and adequate threat information that reaches the cockpit crew."

The FAA recognizes that crewmembers play an important role as the air carrier's "eyes and ears" and that they are subject to Federal requirements to receive training in security procedures. In order to assist them in their responsibilities, including preventive security and emergency response, the FAA believes that carriers should be required to provide crewmembers with all threat information that is determined to be specific and credible. Such threat information could be obtained from FAA-issued Security Directives, or from information obtained directly by the carrier. The proposed rule would ensure that all crewmembers receive all useful information, while limiting the possibility that they will be flooded with bogus threats.

The FAA is proposing, in its new § 108.19(a), to require that upon receipt

of a specific and credible threat to the security of a flight, the air carrier shall immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied. Further, the air carrier would be required to ensure that the in-flight security coordinator then notifies the flight and cabin crew. (Under the provisions of 14 CFR 108.10, the pilot in command is the in-flight security coordinator.)

Pursuant to their approved security programs, air carriers are now required to communicate to the in-flight security coordinator, through the ground security coordinator, all pertinent security information for the specific flight. The proposed rule goes further than the current requirements in that the carrier would be required to provide ground and in-flight security coordinators with any evaluation of the threat information and any countermeasures to be applied. The FAA intends carriers to include not only the carrier's internal assessment of the threat, but also any evaluation received from any source, including government intelligence agencies. Thus the pilot in command will be fully informed of all evaluations of the threat. In a second major change from existing requirements, the proposed rule would obligate the air carrier to ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the same threat information. Currently, pursuant to the air carriers' security programs, the in-flight security coordinator is required to brief the crew on any significant occurrences that may affect the security of the flight. There is a concern, however, that in-flight security coordinators may not routinely pass on all such information. This proposed rule would eliminate any discretion on this issue, and require the carrier to ensure that the in-flight security coordinator provides the flight and cabin crew with threat information along with any evaluation and the countermeasures to be applied. This measure will help ensure that crews are thoroughly informed, so that they can focus their attention on possible security problems and perform their security-related functions with a heightened level of care and awareness.

The FAA believes that expanding and clarifying the notification requirements for the pilot in command, and expanding the information network to include all members of the flight and cabin crews, will help ensure the effective use of crew resources.

#### *Regulatory Evaluation Summary*

This section summarizes the full regulatory evaluation prepared by the

FAA that provides more detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress has already determined that this proposed rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the proposed rule be promulgated (The Aviation Security Improvement Act of 1990: Pub. L. 101-604). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the proposed rule. The purpose of this evaluation is not to justify taking this proposed rulemaking action (which has already been done through Congressional action), but to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the proposed rule. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the executive order, therefore a full regulatory analysis, including the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is

referred to the full regulatory evaluation contained in the docket.

#### Costs

The proposed rule is expected to impose a negligible incremental cost of compliance on U.S. air carriers. In addition, the proposed rule is not expected to impose any monetary costs on the flying public. This assessment is based on the rationales contained in the following paragraphs.

The FAA expects the costs of the proposed rule to be negligible based on two assumptions. First, the proposed rule is assumed not to substantially increase the costs associated with the current flow of specific and credible security threat information between air carrier management and ground and in-flight security coordinators. This is because air carriers are already providing most of the security information that would be required by the proposed rule to ground and in-flight security coordinators on a routine basis.

The second assumption of this evaluation is that the major additional requirement the proposed rule would impose on air carriers beyond current industry practice would be to ensure that in-flight security coordinators notify flight and cabin crewmembers of *all* specific and credible security threats and to require air carriers to provide any evaluation of the threat information and countermeasures to be applied. Disclosure of this information to flight and cabin crewmembers would impose only a negligible cost of compliance on air carrier operators because they already compile specific and credible security threat information on a routine basis.

Although the FAA contends that the proposed rule would impose a negligible cost of compliance for the notification process, it recognizes that the potential for significant costs does exist in some cases. The magnitude of this potential would depend on the extent to which flight and cabin crews expand the field of information available to security experts, who could then decide to take additional countermeasures based upon all security information available. These measures could include delaying scheduled flights from departing or requesting airborne flights to land for the purpose of conducting additional security checks or applying countermeasures.

The average time required to conduct a security check for narrow and wide-body aircraft on the ground ranges between three and five hours. If an aircraft is airborne and forced to land for a security check, there would be an additional cost for landing fees and

delay time. Another cost factor (qualitative) associated with this potential situation would be the inconvenience imposed on passengers in the form of delays. According to one air carrier, the cost of an aircraft delay as the result of conducting additional security countermeasures could range between \$200,000 to over \$1 million (in 1990 dollars) per security check from a worst case standpoint. The reader is cautioned that this range of aircraft delay cost estimate is rough and incorporates a number of general assumptions. Some of the assumptions include: the delayed aircraft is the only one connected to departures from other areas, additional flight crew may be needed due to time and duty limitations, lawsuits may be filed by some business passengers, cost may be incurred for another slot at the gate, plus a multitude of other factors. Over the past 10 years, on average, air carriers have received between 650 and 750 security threats annually. An estimated 600 to 700 of these represented anonymous threats that were not determined to be specific and credible. None of these bogus threats resulted in an explosion or the discovery of a bomb. During the same period, there were about 50 credible aircraft security threats annually, 30 of which were also deemed specific. To date, there is no evidence of an explosion or discovery of bomb relating to specific and credible security threats. The FAA solicits comments from the aviation community on delay cost estimates as the result of the application of security countermeasures.

#### Benefits

The proposed rule would generate benefits by ensuring that the current high level of aviation safety remains intact. Under the proposal, air carriers would be required to provide *all* credible and specific security threats, as well as any evaluation thereof and countermeasures to be applied, to the ground and in-flight security coordinators. In turn, the in-flight security coordinator would notify the flight and cabin crewmembers. The flight and cabin crewmembers would benefit directly from the proposal. As the "eye and ears" of an air carrier, flight and cabin crewmembers are trained to be alert to possible security threats and to apply security procedures when a threat is suspected. The proposal would better enable flight and cabin crewmembers to conduct their security responsibilities by enhancing their alertness to indications that a threat may be actually carried out. The enhanced awareness of the flight and cabin crews would subsequently benefit

the in-flight security coordinator by enhancing the information he or she has as the pilot in command. The proposal could benefit the traveling public by reducing the possibility that security threats to a U.S. air carrier not disclosed to flight and cabin crewmembers would result in casualty losses (namely, aviation fatalities and property damage).

#### Conclusions

The proposed rule would impose only negligible incremental costs on air carriers and could result in benefits to the aviation community and flying public in the form of ensuring that the current high level of aviation safety remains intact. Therefore, the FAA concludes that the proposed rule is cost-beneficial.

#### *Initial Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this proposed rule are scheduled air carrier operators for hire that own but do not necessarily operate nine or fewer aircraft. A significant economic impact for these small entities would be an annualized cost that exceeds \$105,000 (in 1990 dollars). Since the incremental cost of compliance is expected to be negligible (less than \$105,000 annually for each air carrier operator), the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *International Trade Impact Assessment*

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would be expected to impose only negligible costs on U.S. air carrier operators. This proposed action would not result in a competitive disadvantage to U.S. air carrier operators.

#### *Federalism Implications*

The proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, it is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory

Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

#### List of Subjects in 14 CFR Part 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

#### The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 108 of the Federal Aviation Regulations (14 CFR part 108) as follows:

1. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); 49 U.S.C. App. 1341-1358 revised Pub. L. 101-604, November 16 1990).

2. Section 108.19 is amended by redesignating paragraphs (a) and (b) as (b) and (c) respectively; by adding a new paragraph (a); and by revising the section heading to read as follows:

#### § 108.19 Security threats and procedures.

(a) Upon receipt of a specific and credible threat to the security of a flight, the certificate holder shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied; and

(2) Ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the threat, any evaluation thereof, and any countermeasures to be applied.

\* \* \* \* \*

Issued in Washington, DC on January 28, 1991.

Lynne A. Osmus,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 91-2471 Filed 1-29-91; 4:22 pm]

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# Federal Register

Monday  
February 4, 1991

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## Part III

# Department of Transportation

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Federal Aviation Administration

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14 CFR Part 129

Foreign Air Carrier Security Programs;  
Proposed Rule

## DEPARTMENT OF TRANSPORTATION

## 14 CFR Part 129

[Docket No. 26460; Notice No. 91-3]

RIN 2120-AD94

## Foreign Air Carrier Security Programs

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Federal Aviation Regulations to require foreign air carriers that land or take off in the United States to provide passengers a level of protection similar to the level of protection provided by U.S. air carriers at the same airports. To ensure that foreign air carrier security programs provide a similar level of protection, the Administrator could amend those programs according to the procedures proposed in this notice. This action is needed to ensure that appropriate security measures are implemented by foreign air carriers operating into and out of the United States and to comply with legislation enacted on November 16, 1990. The intended effect of this proposed rule is to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States by reducing the risk of fatalities and property damage attributable to criminal acts against civil aviation.

**DATES:** Comments must be submitted on or before March 6, 1991.

**ADDRESSES:** Comments on this proposed rulemaking should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, attention: Rules Docket (AGC-10), room 915-G, Docket No. 26460, 800 Independence Ave. SW., Washington, DC 20591. Comments may be examined in room 915-G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Max D. Payne, Civil Aviation Security Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267-7839.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact

that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket as specified above. All comments received on or before the closing date for comments specified will be considered by the Federal Aviation Administration before taking action on this proposed rulemaking. The proposals contained in this document may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26460." The postcard will be date-stamped and mailed to the commenter.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background***Statement of the Problem*

Attacks against civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the flying public. Over 1,000 passengers on civil aircraft from 14 different member States of the International Civil Aviation Organization (ICAO) have died as the result of criminal acts against civil aviation in the last 10 years. Sabotage and hijacking of civil aircraft are worldwide problems requiring a unified, global solution.

*History*

The Federal Aviation Administration's (FAA) present Civil

Aviation Security Program was initiated in 1973. The pertinent provisions in Part 129 of the Federal Aviation Regulations (FAR), which govern the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by DOT, were initially promulgated in 1976 (41 FR 30106, July 22, 1976).

The FAA issued an amendment to FAR § 129.25(e) in 1989 (54 FR 11116, March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The submitted programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the safety of persons and property traveling in air transportation. The rule applies to foreign air carrier operations at U.S. airports and at foreign airports that are a last point of departure prior to landing in the United States.

With respect to that portion of a security program dealing with identified airports that are a last point of departure to the United States, a Notice of Implementation Policy (54 FR 25551, June 15, 1989) set forth a policy that allows a foreign air carrier to refer the FAA to the appropriate foreign government authorities that implement those procedures. Currently, 136 foreign air carriers are required to submit security programs and all have done so.

On November 29, 1976, the FAA promulgated a new 14 CFR part 191 (41 FR 53777, December 9, 1976) establishing the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1976. Security programs are documents detailing how U.S. air carriers and foreign air carriers will comply with the requirements contained in the FAR. They contain sensitive security procedures and are not available to the public.

*Related Activities*

It is vitally important to recognize the global nature of terrorism and other criminal acts against civil aviation. Illicit access to the air transportation system may be attempted through airports in countries far from the terrorist's intended target where the perceived threat to that nation's interests is not high and the security measures accordingly less stringent. It is therefore essential to raise the standard of aviation security worldwide to prevent terrorist acts.

The security Standards and Recommended Practices (SARPs) developed by the International Civil Aviation Organization (ICAO) and incorporated into Annex 17 of the Convention on International Civil Aviation (Chicago Convention) are continually reviewed and updated. At the next meeting of the ICAO Aviation Security Panel in June 1991, a complete review of the current SARPs will be conducted. The Panel will recommend to the ICAO Council those changes to the SARPs it determines are necessary to counter the global threat to civil aviation security.

It is not always possible or appropriate to unilaterally impose identical security procedures for U.S. air carriers and foreign air carriers, because the perceived—and often the actual—threat directed at the air carriers of various nations differs widely. An attempt to require all air carriers, foreign and domestic, to follow identical procedures could precipitate major economic and political confrontations with little or no increase in passenger security. Bilateral negotiations will be used, when necessary, to preclude such confrontations and increase the level of aviation security. The Secretaries of State and Transportation are committed to both multilateral and bilateral actions to improve and strengthen security standards.

#### *Congressional Activity*

On November 16, 1990, the President signed the Aviation Security Improvement Act of 1990 (Pub. L. 101-604). This legislation provides that the Administrator of the FAA may accept a foreign air carrier security program only if the Administrator determines that the security program provides passengers with a similar level of protection as such passengers would receive under the security programs of U.S. air carriers serving the same airports.

#### *Current Requirements*

Currently, Part 129 requires each foreign air carrier landing or taking off in the United States to adopt and use a security program acceptable to the Administrator. The security program must describe the procedures, facilities, and equipment used by the foreign air carrier to ensure the safety of persons and property traveling in air transportation. The standard for acceptance by the Administrator initially was adherence to part 129 and the ICAO Standards in Annex 17.

The FAA is revising the standard for acceptance of a foreign air security program. The proposed revision is issued to foreign air carriers for

comment on October 24, 1990. Under this proposed revision, foreign air carriers would be required to detect test objects (simulated weapons and explosive devices) during FAA tests of the security screening checkpoints at U.S. airports. The new standard would also require foreign air carriers to adopt the same standards for X-ray imaging, metal detector calibrations, and training for screening personnel that are required of U.S. air carriers at the same airports in the United States. Further, the revision would require a positive passenger/baggage match for all flights to and from the United States in accordance with current ICAO Standards.

#### *Discussion of the Proposals*

The FAA is proposing to amend part 129 to ensure that all foreign air carriers that land or take off in the United States adopt and use a security program that provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. The security measures needed to provide a similar level of protection will vary with the risk.

Risk is a combination of the threat and the effectiveness of the security measures performed to counter the threat. Certain flights from certain locations are at greater risk, but the threat at any location may change at any time. Ineffective security measures increase the risk even though the prevailing threat may not be directed toward that airport or carrier. Persons intent upon sabotaging or hijacking civil aircraft are likely to gravitate to those airports where it is easiest to circumvent security procedures and enter the air transportation system.

The FAA is proposing to amend part 129 to authorize the Administrator to amend foreign air carrier security programs in the interest of safety in air transportation or in air commerce and in the public interest. The procedures proposed for the amendment of foreign air carrier security programs by the Administrator closely parallel the procedures in part 108 for the amendment of U.S. air carrier security programs. In most cases, proposed amendments would be issued to the foreign air carrier for comment prior to adoption. A specified period of time is set aside for submission of comments and implementation of any amendment adopted. In an emergency, when a comment period would be impractical or contrary to the public interest, the Administrator would be authorized to amend a security program effective on

the date it is received by the foreign air carrier.

To ensure effective security measures, the FAA could amend foreign air carrier security programs to include standby enhanced security procedures. The enhanced procedures could be performed at airports where the FAA has identified an increased risk to passengers and the Administrator determines that such procedures are necessary to provide passengers a similar level of protection. The FAA will consult the foreign government authority whenever enhanced security procedures are deemed necessary at a foreign airport.

#### **Regulatory Evaluation Summary**

##### *Introduction*

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of \$100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposed rule is not "major" as defined in the executive order; therefore, a full Regulatory Impact Analysis, which includes the identification and evaluation of cost-reducing alternatives to this proposed rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposed rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the Regulatory Flexibility Determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. If more detailed economic information is desired, the reader may refer to the full

regulatory evaluation contained in the docket.

#### Cost/Benefit

Under the authority of the proposed amendment, existing foreign air carrier security programs could be amended by adding a standby set of enhanced security procedures for flights departing to the United States. The enhanced procedures would be activated when and where the FAA identifies an increased risk and the Administrator determines that such procedures are necessary to provide passengers a similar level of protection as that provided by U.S. air carriers serving the same airports.

Since the extent to which these enhanced procedures would be activated is dependent on unknown future risk conditions, a definitive estimate of the total costs attributable to the proposal is not possible. Accordingly, this evaluation includes estimates of the unit costs that would be incurred to employ the enhanced procedures for a range of application levels.

Work-load estimates for the twelve individual enhanced security procedures were developed by the FAA. The unit costs for each procedure were multiplied by the appropriate operations data to determine the expected cost per departure and the average annual costs per station, per foreign air carrier, and for all foreign air carriers that would be subject to the provisions of the rule.

On average, the FAA estimates that the enhanced security procedures would increase costs by \$349 per airport departure during the first year at those stations where the procedures are applied. The average annual costs for larger aggregations are estimated at \$238,000 per station, \$510,000 per foreign air carrier, and a maximum potential of \$49.5 million if the enhanced procedures were activated for all foreign carrier flights into the U.S. for 1 year. The worldwide risk conditions that would be necessary to activate these procedures for all flights by all foreign air carriers would be unprecedented.

Based on previous experience, the FAA estimates that not more than 10 percent of foreign carrier stations are likely to operate under the enhanced security procedures at any given time. Applying this assumption, the most likely cost of the proposed amendment would not exceed \$4.9 million per year.

For comparison purposes, it is estimated that the economic valuation of a terrorist explosion incident would range on average between \$94 and \$104 million, not counting injuries or secondary effects. These data support

the position that the proposed rule would be cost-beneficial if one average terrorist explosion incident were averted: (1) Over a 20-year period at the expected level of costs, or (2) over a 2-year period at the maximum estimated potential cost where the enhanced security procedures would be implemented by all affected foreign air carriers for all flights to the United States. The determination that the proposal would be cost-beneficial is further supported by the fact that the enhanced security procedures would be applied in those cases where the FAA has identified an increased risk to passengers and the Administrator has determined that they are necessary.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA required a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that this proposed rule would not directly affect U.S. enterprises and, therefore, it would not have an economic impact on small domestic entities. This evaluation has not considered the impact on small foreign entities on the basis that they are external to the scope of the RFA.

#### International Trade Impact Analysis

The provisions of this proposed rule could affect the existing access to U.S. markets by foreign interests. It would require that the security programs of foreign air carriers provide passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. The most likely cost of the proposed amendment would not exceed \$4.9 million per year—an average of \$51,000 per year per foreign air carrier providing service to the United States from airports that are also served by U.S. air carriers. United States air carriers are already subject to the enhanced security procedures associated with this proposal.

#### Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism statement.

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects in 14 CFR Part 129

Aircraft, Air carriers, Airports, Aviation safety, Weapons.

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 129 of the Federal Aviation Regulations (14 CFR part 129) as follows:

#### **PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE**

1. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 129.25(e) is revised to read as follows:

#### **§ 129.25 Airplane Security.**

(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier's security program is

accepted only if the Administrator finds that the security program provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. Foreign air carriers shall employ procedures equivalent to those required of U.S. air carriers serving the same airports if the Administrator determines that such procedures are necessary to provide passengers a similar level of protection. The following procedures apply for acceptance of a security program by the Administrator:

(1) Unless otherwise authorized by the Administrator, each foreign air carrier required to have a security program by paragraph (b) of this section shall submit its program to the Administrator at least 90 days before the intended date of passenger operations. The proposed security program must be in English unless the Administrator requests that the proposed program be submitted in the official language of the foreign air carrier's country. The Administrator will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition the Administrator to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(2) In the case of a security program previously found to be acceptable pursuant to this section, the

Administrator may subsequently amend the security program in the interest of safety in air transportation or in air commerce and in the public interest within a specified period of time. In making such an amendment, the following procedures apply:

(i) The Administrator notifies the foreign air carrier, in writing, of a proposed amendment, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the proposed amendment.

(ii) At the end of the comment period, after considering all relevant material, the Administrator notifies the foreign air carrier of any amendment to be adopted and the effective date, or rescinds the notice of proposed amendment. The foreign air carrier may petition the Administrator to reconsider the amendment, in which case the effective date of the amendment is stayed until the Administrator reconsiders the matter.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedures in paragraph (e)(2) of this section impractical or contrary to the public interest, the Administrator may issue an amendment to the foreign air carrier security program, effective without stay on the date the foreign air carrier receives notice of it. In such a case, the Administrator incorporates in the notice

of amendment the finding and a brief statement of the reasons for the amendment.

(4) A foreign air carrier may submit a request to the Administrator to amend its security program. The requested amendment must be filed with the Administrator at least 45 days before the date the foreign carrier proposes that the amendment would become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving the requested amendment, the Administrator will notify the foreign air carrier whether the amendment is acceptable. The foreign air carrier may petition the Administrator to reconsider a notice of unacceptability of the requested amendment within 45 days after receiving notice of unacceptability.

(5) Each foreign air carrier required to use a security program by paragraph (b) of this section shall, upon request of the Administrator and in accordance with the applicable law, provide information regarding the implementation and operation of its security program.

\* \* \* \* \*

Issued in Washington, DC, on January 29, 1991.

**Kenneth M. Lauterstein,**  
*Acting Director, Office of Civil Aviation  
Security Policy and Planning.*

[FR Doc. 91-2470 Filed 1-29-91; 4:22 pm]

BILLING CODE 4910-13-M



# Registered Treatment

Monday  
February 4, 1991

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## Part IV

# Department of Health and Human Services

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## Office of Human Development Services

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### Runaway and Homeless Youth Program; Availability of Financial Assistance; Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Human Development Services**

[Program Announcement No. HDS/ACYF/RHYP 93.623-91-1]

**Runaway and Homeless Youth Program; Availability of Financial Assistance**

**AGENCY:** Administration of Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS).

**ACTION:** Announcement of availability of financial assistance for Basic Center grants.

**SUMMARY:** The Family and Youth Services Bureau of the Administration for Children, Youth, and Families announces the availability of fiscal year 1991 funds for the Runaway and Homeless Youth Basic Center Grant Program.

Basic Center grant applications are solicited in two categories: Basic Center Expansion awards and Basic Center New Start awards. Noncompetitive continuation awards are not affected by this solicitation. Competition for new Basic Center awards will be possible in all States and Territories except Vermont, Wyoming, Guam, the Northern Marianas, and Palau. In the jurisdictions listed above, the amount required for non-competing continuations equals the State's total allotment. (See the Table of Allocations by State and the accompanying narrative (part I, Section G, "Available Funds for Basic Centers") for an explanation.)

**DATES:** The deadline or closing date for receipt of all applications under this announcement is: April 5, 1991.

**ADDRESSES:** Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-91-ACYF/RHYP/Basic Centers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Preston Bruce, Administration for Children, Youth, and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, telephone: (202) 245-0904.

**SUPPLEMENTARY INFORMATION:**

**Part I. Background Considerations**

*A. Scope of This Program Announcement*

This program announcement solicits applications and describes the application process for Basic Center grants under the Runaway and Homeless Youth Program. Basic Center applications are solicited in two categories: Basic Center Expansion awards and Basic Center New Start awards. (See paragraph G, below, for explanations of these two categories.) Both categories of grants will be competitively awarded during the third and fourth quarters of FY 1991. Project periods for grants will be three years for the New Start awards and either one or two years for the Expansion awards, depending on the number of years remaining in the project periods of the grants seeking expansion funds.

*B. Legislative Authority*

Grants under this program are authorized by part A of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.* The Act was enacted as title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), the Juvenile Justice Amendments of 1984 (Pub. L. 98-473), the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), and the Domestic Volunteer Service Amendments of 1988 (Pub. L. 101-204).

*C. Outline of Program Announcement*

This program announcement consists of five parts and appendices. Part I provides background information for potential applicants to apply for Basic Center grants. Part II describes the application process for the two categories of Basic Center grants: New Starts and Expansions. Part III outlines the responsibilities of the Basic Center grantees in the two categories. Part IV provides the criteria to be used in evaluating the applications. Part V provides instructions for assembling and submitting applications for Basic Center grants in the two categories. Following Part V are appendices to be consulted and forms to be used in preparation of applications.

*D. Program Purpose*

The purpose of part A of the Act and of the Runaway and Homeless Youth Grant Program is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, counseling, and

aftercare services) of runaway and homeless youth and their families.

The term "runaway youth" means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian (45 CFR 1351.1(k)).

Under part A of the Act, the term "homeless youth" means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care (45 CFR 1351.1(f)).

Programs receiving Runaway and Homeless Youth Act funding under this announcement are required to adhere to the Program Performance Standards which are included in appendix C of this announcement.

*E. Program Goals and Objectives*

The program goals and objectives of part A of the Act are to assist runaway and homeless youth centers to: (1) Alleviate the problems of runaway and homeless youth, (2) reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services, (3) strengthen family relationships and encourage stable living conditions for youth, and (4) help youth decide upon constructive courses of action.

*F. Eligible Applicants*

States, Territories, localities, private for-profit and private non-profit agencies, and coordinated networks of such agencies are eligible to apply for Runaway and Homeless Youth Program Basic Center grants—either New Starts or Expansions—under this announcement unless they are part of the law enforcement structure or the juvenile justice system. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private agencies.

*G. Available Funds for Basic Centers*

In FY 1991, the Administration for Children, Youth and Families expects to award \$31,618,800 in Basic Center grants. This total will be divided among the States in proportion to their respective populations under the age of 18, with the condition that the amount allotted to each State (including the District of Columbia and Puerto Rico) will be at least \$75,000; and the amounts allotted to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the

Commonwealth of the Northern Mariana Islands will be at least \$30,000 each.

#### Non-competing Awards

Of the total amount available for Basic Center grants \$17,212,590 will be awarded in the form of non-competing continuation grants to current Basic Center grantees having one or two years remaining in their project periods. Grantees in this category will receive instructions from their respective OHDS Regional Offices on the procedures for applying for these continuation grants. These grantees are listed in appendix G and have project expiration dates in fiscal years 1992 or 1993.

#### Competitive Awards

Approximately \$14,406,210 will be awarded competitively under this announcement. Eligible applicants may apply for these funds in only one of the following two categories:

**Category 1: Basic Center Expansion Grants (Expansions).** Only current Basic Center grantees with one or two years remaining on their grants (that is, with project periods ending in fiscal year 1992 or 1993), and whose current awards are under \$75,000 annually, are eligible to apply for Basic Center Expansion grants. Basic Center grantees whose current annual budget period awards are \$75,000 or over may not apply for these Expansion grants. Applicants for Expansion grants may request an award such that the total of the basic continuation (non-competitive) award plus the Expansion award will not exceed \$75,000 per annual budget period.

The purpose of the Expansion awards is to allow current grantees now receiving Federal support at a level too low to carry out the full range of required activities to expand and/or strengthen their Basic Center services. It is also anticipated that current problems of inequity in funding levels among

grantees will be at least partially alleviated by this policy.

**Category 2: Basic Center New Start Grants (New Starts).** Current Basic Center grantees with project periods ending in fiscal year 1991 and all remaining eligible applicants not currently receiving funds under the Runaway and Homeless Youth Act for Basic Centers may apply for Basic Center New Start grants.

(Note: Basic Center grantees with one or two years remaining on their current awards may not apply for these New Start grants.)

Applicants may refer to appendix G for a listing of current Basic Center expiration dates.

Basic Center Expansion grants and Basic Center New Start grants will be awarded during the third and fourth quarters of fiscal year 1991. The Expansion grants will be awarded in the form of supplements to the continuation awards of successful applicants. The supplements will be for one or two years, depending on the ending dates of the grantees' current project periods.

All New Start applicants this year, fiscal year 1991, should request three-year project periods (Standard Form 424A (Rev. 4-88), Budget Information, section E).

While the project period for each New Start award will be for three years, the initial award of grant funds will cover a budget period of only one year. Award of funds for subsequent budget periods will depend upon satisfactory performance by the grantee (including timely submission of required reports) and on the availability of appropriated funds.

Funding recommendations for the competitive Basic Center applications (for both Expansions and New Starts) will be based primarily on the scores assigned to the applications by the non-

Federal reviewers who will evaluate each application according to the criteria presented in part IV, below, and on recommendations from staff of the Administration for Children, Youth and Families (ACYF). Final decisions will be made by the Commissioner of ACYF.

The number of competitive awards made within each State will depend upon the funds available (i.e., the States's total allotment less the amount required to fund non-competing continuations in that State) as well as on the number of acceptable applications. Thus, where the amount required for non-competing continuations in any State equals the State's total allotment, no competitive awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services will be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, will reallocate any unused funds.

Section 362(a) of the Act requires that grantees provide a non-Federal match that equals at least 10 percent of the Federal funds requested under this announcement (for details see section H below: "Grantee Share of the Project").

Section 366(a)(2) of the Runaway and Homeless Youth Act requires that not less than 90 percent of the funds appropriated for a fiscal year shall be available for support of local runaway and homeless youth centers. The following Table, which reflects this requirement, indicates the FY 1991 allocations for each State. In this Table, the amount shown in the column labeled "Expansions/New Starts" is the amount available for competition in each State in FY 1991.

### RUNAWAY AND HOMELESS YOUTH CENTERS TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—Fiscal Year 1991]

| Regions/States             | Continuations | Expansions/new starts | Total allotments |
|----------------------------|---------------|-----------------------|------------------|
| <b>Region I:</b>           |               |                       |                  |
| Connecticut .....          | \$185,815     | \$179,621             | \$365,236        |
| Maine .....                | 82,729        | 64,039                | 146,768          |
| Massachusetts .....        | 316,545       | 326,829               | 643,374          |
| New Hampshire .....        | 108,461       | 26,277                | 134,738          |
| Rhode Island .....         | 0             | 111,159               | 111,159          |
| Vermont .....              | 75,000        | 0                     | 75,000           |
| <b>Region II:</b>          |               |                       |                  |
| New Jersey .....           | 314,151       | 567,901               | 882,052          |
| New York .....             | 1,463,686     | 629,564               | 2,093,250        |
| Puerto Rico .....          | 266,910       | 341,817               | 608,727          |
| Virgin Islands .....       | 0             | 30,000                | 30,000           |
| <b>Region III:</b>         |               |                       |                  |
| Delaware .....             | 46,313        | 34,530                | 80,843           |
| District of Columbia ..... | 29,308        | 45,692                | 75,000           |
| Maryland .....             | 66,843        | 491,838               | 558,681          |

## RUNAWAY AND HOMELESS YOUTH CENTERS TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—Fiscal Year 1991]

| Regions/States                | Continuations | Expansions/new starts | Total allotments |
|-------------------------------|---------------|-----------------------|------------------|
| Pennsylvania .....            | 778,813       | 587,815               | 1,366,628        |
| Virginia .....                | 368,563       | 344,586               | 713,149          |
| West Virginia .....           | 188,525       | 34,274                | 222,799          |
| Region IV:                    |               |                       |                  |
| Alabama .....                 | 377,217       | 155,960               | 533,177          |
| Florida .....                 | 701,921       | 680,105               | 1,382,026        |
| Georgia .....                 | 700,461       | 163,787               | 864,248          |
| Kentucky .....                | 126,792       | 338,535               | 465,327          |
| Mississippi .....             | 307,635       | 62,413                | 370,048          |
| North Carolina .....          | 232,927       | 557,215               | 790,142          |
| South Carolina .....          | 373,895       | 85,176                | 459,071          |
| Tennessee .....               | 493,794       | 110,121               | 603,915          |
| Region V:                     |               |                       |                  |
| Illinois .....                | 662,170       | 771,345               | 1,433,515        |
| Indiana .....                 | 365,899       | 336,663               | 702,562          |
| Michigan .....                | 832,602       | 343,468               | 1,176,070        |
| Minnesota .....               | 441,732       | 102,032               | 543,764          |
| Ohio .....                    | 623,935       | 731,625               | 1,355,560        |
| Wisconsin .....               | 218,406       | 385,509               | 603,915          |
| Region VI:                    |               |                       |                  |
| Arkansas .....                | 95,804        | 216,499               | 312,303          |
| Louisiana .....               | 341,666       | 270,429               | 612,095          |
| New Mexico .....              | 96,960        | 121,508               | 218,468          |
| Oklahoma .....                | 348,259       | 62,210                | 410,469          |
| Texas .....                   | 1,322,969     | 1,059,967             | 2,382,936        |
| Region VII:                   |               |                       |                  |
| Iowa .....                    | 209,812       | 130,882               | 340,694          |
| Kansas .....                  | 257,546       | 59,569                | 317,115          |
| Missouri .....                | 252,080       | 375,895               | 627,975          |
| Nebraska .....                | 95,059        | 108,973               | 204,032          |
| Region VIII:                  |               |                       |                  |
| Colorado .....                | 177,615       | 238,148               | 415,763          |
| Montana .....                 | 87,163        | 17,740                | 104,903          |
| North Dakota .....            | 75,000        | 11,136                | 86,136           |
| South Dakota .....            | 77,703        | 17,014                | 94,717           |
| Utah .....                    | 248,474       | 55,168                | 303,642          |
| Wyoming .....                 | 75,000        |                       | 75,000           |
| Region IX:                    |               |                       |                  |
| Arizona .....                 | 59,659        | 412,405               | 472,064          |
| California .....              | 1,972,594     | 1,739,436             | 3,712,030        |
| Hawaii .....                  | 0             | 138,106               | 138,106          |
| Nevada .....                  | 0             | 133,776               | 133,776          |
| American Samoa .....          | 0             | 30,000                | 30,000           |
| Guam .....                    | 30,000        | 0                     | 30,000           |
| Northern Marianas .....       | 30,000        | 0                     | 30,000           |
| Trust Territory (Palau) ..... | 30,000        | 0                     | 30,000           |
| Region X:                     |               |                       |                  |
| Alaska .....                  | 42,565        | 36,834                | 79,399           |
| Idaho .....                   | 119,899       | 26,388                | 146,287          |
| Oregon .....                  | 107,085       | 228,316               | 335,401          |
| Washington .....              | 309,230       | 275,915               | 585,145          |
| Totals .....                  | \$17,212,590  | \$14,406,210          | \$31,618,800     |

*H. Grantee Share of the Project*

The Act requires the grantee to provide a non-Federal match that equals at least 10 percent of the Federal funds awarded. For example, if the applicant requests \$100,000 in Federal funds (line 15a of Standard Form 424), then the non-Federal share (the sum of lines 15b, 15c, 15d, and 15e) must equal or exceed \$10,000. For a project requesting \$49,000 in Federal funds, the non-Federal share must equal or exceed \$4,900.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles

provided in 45 CFR parts 74 and 92, the Department's regulations on the administration of grants. For-profit applicants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

**Part II. Application Process***A. Assistance to Prospective Grantees*

Potential grantees can receive informational assistance in developing applications from the appropriate ACYP Regional Youth Contacts listed in appendix E or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this

announcement). Organizations may also receive information and technical assistance in writing applications from the appropriate Coordinated Network grantee listed in appendix F.

*B. Application Requirements*

To be considered for a Runaway and Homeless Youth Basic Center Expansion grant or a Basic Center New Start grant, each application must be submitted on the forms provided at the end of this announcement (see section E below) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and

to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

#### C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications by OMB.

#### D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end on June 4, 1991, to allow time for HDS to review, consider and attempt to accommodate SPOC input. The SPOCs are encouraged to eliminate the submission of routine endorsements as official

recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201, attn: William J. McCarron, HDS-91-ACYF/RHYP/Basic Centers.

A list of the Single Points of Contact for each State and Territory is included as appendix D of this announcement.

#### E. Availability of Forms and Other Materials

A copy of each form required to be submitted as part of an application for a Basic Center Expansion grant or a Basic Center New Start grant under the Act, and instructions for completing the application, are provided in appendices A and B. The Program Performance Standards and a description of the National Runaway Switchboard are presented in appendix C. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review copies of their proposals are listed in appendix D.

The Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) and the Code of Federal Regulations (CFR) title 45, part 1351, Runaway Youth Program, may be found in major public libraries and at the HDS Regional Offices listed in appendix E at the end of this announcement.

Additional copies of this announcement may be obtained from the HDS Regional Offices or from the information contact person listed at the beginning of this announcement. Further general information may be obtained from the Coordinated Networks listed in appendix F. A listing of all current Basic Center grantees is presented in appendix G.

#### F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined below. This review will be conducted in Washington, DC by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. Applications from a given State will be reviewed competitively with other

applications from that same State. Within a given State, Expansion applications will be reviewed in competition with other Expansion applications, and New Start applications will be reviewed in competition with other New Start applications. The non-Federal experts will review the applications in accordance with the criteria presented in part IV and assign a score to each application. To avoid conflicts of interest, the non-Federal reviewers will be from States other than the one from which applications are being reviewed. The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with OHDS Regional officials, will select from the two categories of applications—Expansions and New Starts—those to be recommended for funding to the Commissioner, ACYF. The criteria to be used in selecting within and between the two categories of applications within a given State will include (1) the scores assigned by the non-Federal reviewers, (2) the adequate geographic distribution of services across the State, and (3) the award of sufficient funds to a given grantee to provide for the full range of required Basic Center services.

The Commissioner will make the final selection of the applicants to be funded. In the interest of effective geographic distribution of the basic center grants, the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect not to fund any applicants having known management, fiscal or other problems, or in situations which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. Funds for successful Expansion applicants will be added to the basic continuation funds these applicants are scheduled to receive.

Organizations whose applications are disapproved will be notified of that decision in writing by the Commissioner of the Administration for Children, Youth and Families.

### Part III. Responsibilities of Basic Center Grantees

To ensure that agencies with the greatest capacity for providing quality services participate in this program, potential grantees who apply for funding under this announcement must demonstrate in the program narrative section of their applications that they are able to meet the requirements of the Act, the Program Performance Standards, and other applicable Federal policies and procedures.

The program narrative statement should be prepared in response to the requirements enumerated below and to the review criteria, presented in part IV, which will be used to evaluate the submissions. To assist applicants in preparing the narrative statements of their grant submissions, the relevant requirements, standards, and applicable policies and procedures have been arranged according to the five review criteria.

The program narrative should be clear and concise, and should not exceed 30 single-spaced pages exclusive of such necessary attachments as organization charts, resumes, and letters of agreement or support. Review of the narrative statement portion of applications will be limited to the first 30 pages.

#### A. Objectives and Need for Assistance

Applicant should include a discussion of:

1. The purpose or objectives of the services to be provided by the Basic Center. The Act requires that, to be eligible for assistance, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center (a locally controlled community-based facility) providing temporary shelter and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles (42 U.S.C. 5711(a)).

Basic Center grants may be awarded to agencies which will operate a central shelter facility, or to agencies which will provide emergency shelter through a series of host homes, or to agencies which will employ a combination of shelter facility(ies) and host homes. (Host homes are facilities, usually homes of private families, that provide short-term shelter. The facilities are under contract to accept runaway and homeless youth assigned by the Basic Center grantee, usually for a nominal fee. They are also licensed according to state or local laws.)

2. The incidence of runaway and homeless youth in the area(s) to be

served. The Act requires that each center shall be located in an area which is demonstrably frequented or easily reachable by runaway youth (42 U.S.C. 5712(b)).

3. Other relevant social, psychological, educational, institutional, health, or other demographic data on the youth to be served.

4. The immediate service needs of runaway and homeless youth and their families, and how the applicant will address these needs in a manner outside the law enforcement structure and the juvenile justice system (42 U.S.C. 5712(a)).

5. The adequacy of existing services, by identifying other youth agencies now providing services in the target area(s), and by describing how the proposed activities will relate to these agencies and services.

#### B. Results or Benefits Expected

Applicants should identify the results and benefits to be derived from the project, and should quantify these through a statement of the numbers of clients to be served and a description of the types and quantities of services to be provided.

(Note: Applicants for Expansion grants should indicate expected increases in the numbers of clients to be served and improvements in the types and quantities of services to be provided.)

#### C. Approach

Applicants should discuss how they will carry out each of the 14 Program Performance Standards established by the Department. The Standards are presented in appendix C of this announcement. A summary of each Standard is presented below along with associated grantee responsibilities.

##### 1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth, and parents.

The applicant shall assure that major outreach efforts will be aimed at street youth or other actual or potential runaway and homeless youth not already under care of government agencies such as child protective services, foster care, or the courts.

##### 2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project.

The applicant shall assure that each youth will enter the center voluntarily and will be free to leave at will, and that Federal funds received under this Act will not be used for services to youth already under care of government

agencies such as child protective services, foster care, or the courts; and shall also assure that it will adhere to State and local laws relating to runaway and homeless youth (such as parent contract provisions, detention of runaways and status offenders, judicial and administrative processes regarding runaways, and licensing requirements).

##### 3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

The applicant shall assure that each facility is in compliance with State and local licensing requirements, and shall accommodate no more than 20 youth at any given time.

##### 4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

The applicant shall assure that the counseling program will include drug abuse prevention.

##### 5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

The applicant shall assure that a major aim of family counseling will be family reunification.

##### 6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

The applicant shall assure that linkages have been or will be established with the National Runaway Switchboard, locally based hotlines, State and regional youth service networks, as well as with other related public and private agencies such as health, law enforcement and education systems.

The applicant shall assure that linkages have been or will be established and maintained with appropriate drug abuse prevention agencies.

##### 7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and

through referrals to other agencies and individuals.

#### 8. Recreational Program

The project shall provide a recreational/leisure time schedule of activities for youth admitted to the project for residential care.

#### 9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

#### 10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

If applicable, the applicant shall describe the recruitment, training, and use of volunteers.

#### 11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

The applicant shall assure the participation of young people in the operation of the program in capacities such as advising or serving on governing boards, providing direct services such as peer counseling and outreach, and related activities.

#### 12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

Section 312(b) of the Act requires that each grantee shall keep adequate statistical records profiling the children and family members which it serves, shall maintain the confidentiality of these records, and shall submit annual reports detailing how the center has been able to meet the goals of its plans. These reports shall include summaries of the required statistical records.

The applicant shall describe the statistical records and evaluative data to be collected (such as numbers of runaway and homeless youth and their families served and the types and quantities of services provided) and the procedures for gathering and analyzing the data to determine the extent to which the project is achieving the results and benefits expected.

The applicant shall describe procedures for preparing and submitting to the Department of Health and Human Services the quarterly progress reports and the biennial financial reports required by the OHDS grants program and the annual reports required by the Act.

#### 13. Ongoing Center Planning

The center shall develop a written plan at least annually.

#### 14. Board of Directors/Advisory Body

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

If applicable, the applicant shall identify and describe the Board of Directors/Advisory Body.

#### D. Staff Background and Organizational Experience

Applicants should provide biographical sketches of the project director and other proposed key personnel, indicating their qualifying experiences for the project. (Applicants may refer to one-page resumes included in the supplementary documentation.)

Section 311(b)(4) of the Act, 42 U.S.C. 5711(b), requires that, in selecting among applicants for grants under this part, priority shall be given to private entities that have experience in providing services to runaway and homeless youth and their families. (Applicants may refer to the Organizational Capability Statement included in the submission.)

#### E. Budget Appropriateness

Section 312(b) of the Act, 42 U.S.C. 4712(b), requires that each applicant shall submit a budget estimate with respect to its planned activities. Applicants should be aware of the following requirements of the law and regulations in preparing this portion of the program narrative:

(1) The Act requires that priority be given to grants smaller than \$150,000 (sec. 313 of the Act, 42 U.S.C. 5712);

(2) A Runaway and Homeless Youth grant may not cover the cost of constructing new facilities (45 CFR 1351.16); and

(3) Costs for the renovation of existing structures may not normally exceed 15 percent of the grant award. The Department of Health and Human Services may waive this limitation upon written request under special circumstances based on demonstrated need (45 CFR 1351.15).

Applicants should demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants should refer to the budget information presented in Standard Forms 424 and 424A and in the budget justification which follows these forms, and should relate this information to the results or benefits expected (Criterion 2) by detailing the numbers of youth, beds, meals and other services that will be supported with Federal

funds. Applicants should also indicate non-Federal sources of support.

(Note: Applicants for Expansion funds should describe the numbers of youth, beds, meals and other services that will be supported with their basic continuation funds, the additional numbers that will be supported with Expansion funds, and the expected overall totals.)

#### Part IV. Review Criteria

The five criteria below provide further guidance to be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each section will be accorded in the review process.

##### Criterion 1. Objectives and Need for Assistance (10 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant may refer to part I, section D and E of this announcement.)

Information provided in response to part III, section A, numbers 1, 2, 3, 4, and 5 of this announcement will be used to review and evaluate applicants on the above criterion.

##### Criterion 2. Results or Benefits Expected (20 Points)

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided.

Information provided in response to part III, section B of this announcement will be used to review and evaluate applicants on the above criterion.

##### Criterion 3. Approach (40 Points)

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, e.g., how the project will be maintained after termination of Federal support. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that

will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Information provided in response to part III, section C, numbers 1 through 14 of this announcement will be used to review and evaluate applicants on the above criterion.

*Criterion 4. Staff Background and Organizational Experience (15 Points)*

List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

Information provided in response to part III, section D of this announcement will be used to review and evaluate applicants on the above criterion.

*Criterion 5. Budget Appropriateness (15 Points)*

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and to the results or benefits expected as identified under Criterion 2.)

Information provided in response to part III, section E of this announcement will be used to review and evaluate applicants on the above criterion.

**Part V. Application Assembly and Submission**

*A. Contents of Application*

Each copy of the application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4-88) (page i).
2. Budget Information (Standard Form 424A, REV 4-88) (pages ii-iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv-v).
4. Organizational Capability Statement (pages vi-viii).
5. Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88) (pages ix-x).

6. Certification Regarding Lobbying (page xiii).

7. Program Narrative Statement (pages 1 and following; 30 pages maximum, single-spaced). **SPECIAL NOTE: REVIEW OF THE NARRATIVE STATEMENT PORTION OF APPLICATIONS WILL BE LIMITED TO THE FIRST 30 PAGES. THEREFORE, IT IS HIGHLY RECOMMENDED THAT NARRATIVE STATEMENTS NOT EXCEED THE 30 PAGE MAXIMUM.**

8. Supporting Documents (pages SD-1 and following; 10 pages maximum, exclusive of letters of support or agreement).

*B. Instructions for Preparing Application Components*

1. Standard Forms 424 and 424A: Follow the instructions in appendix B. At the top of Form 424, indicate whether the application is for a New Start or for an Expansion. In box 8 of Form 424, check "New" if the application is for a New Start grant and check "Revision" if the application is for an Expansion grant. If the application is for a Revision, enter the letter "A" in the appropriate box.

2. Budget Justification: Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, used for runaway and homeless youth.

3. Organizational Capability Statement: Applicants should provide a brief (no more than three pages, single-spaced) description of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide the direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. If the agency is a recipient of youth drug abuse prevention funds, youth gang drug prevention funds, or transitional living funds, show how the services supported by these funds are or will be integrated with the runaway and homeless youth services. Discuss the experience of the applicant organization in providing services to runaway and homeless youth.

4. Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying: Of

these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application.

5. Program Narrative Statement: Follow the guidance of Part III, "Responsibilities of Basic Center Grantees," and of Part IV, "Review Criteria."

6. Supporting Documentation: Self-explanatory.

7. Duplication of Applications: Each application will be duplicated by the government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements should be followed:

a. Applicants should attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. Resumes should be limited to one page.

b. The maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

c. *Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.*

*C. Application Submission*

To be considered for a grant, an applicant should submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application should have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The Catalog of Federal Domestic Assistance Number (93.623) and Title (Runaway and Homeless Youth Program) must be clearly identified on the application (SF 424, box 10).

### 1. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: April 5, 1991. Applications must be mailed or hand delivered to: Department of Health and Human Services, HDS/ Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-91-ACYF/RHYP/Basic Centers.

### 2. Deadline for Submission of Applications

a. *Deadline.* Hand delivered applications will be accepted during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

- i. Received on or before the deadline date at the above address, or
- ii. Sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process under chapter I-62 of the Health and Human Services Grants Administration Manual.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria in paragraph "a" of this section are considered late applications. The Office of Human Development Services (HDS) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The Office of Human Development Services may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

### 3. Checklist for a Complete Application

—One original application signed in black ink and dated plus two copies;

—A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424.

The original and both copies of the application include the following:

- SF 424 (The original application should have the word "ORIGINAL" hand printed in bold block letters at the top of its SF 424; at the top of Form 424, indicate whether the application is for a New Start or for an Expansion);
- SF 424A;
- Budget Justification;
- Organizational Capability Statement;
- SF 424B;
- Certification Regarding Lobbying;
- Program Narrative Statement with maximum of 30 single-spaced pages;
- Supporting Documents.

(Catalog of Federal Domestic Assistance Number 93.623, Runaway and Homeless Youth Program)

Dated: January 4, 1991.

**Wade F. Horn,**

*Commissioner, Administration for Children, Youth and Families.*

Approved: January 16, 1991.

**Donna Givens,**

*Deputy Assistant Secretary for Human Development Services.*

BILLING CODE 4130-01-M

APPENDIX A-B: FORMS AND ASSURANCES

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

|  |  |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
|--|--|--|----------------------|------------|-------------|---|--|--|--|--|--|--|--|--------------|----------|-----------------------------|-----------|--|--------------|-----------------------|-------------|-----------------|---------------|---------------|-------------------|------------------------|---------------------|--------------------------|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|-------------------|----|--|--|--|--|--|--|--|--|----------|----|--|--|--|--|--|--|--|--|
| <b>1. TYPE OF SUBMISSION:</b><br>Application<br><input type="checkbox"/> Construction<br><input type="checkbox"/> Non-Construction<br>Preapplication<br><input type="checkbox"/> Construction<br><input type="checkbox"/> Non-Construction   |  | <b>2. DATE SUBMITTED</b>   | Applicant Identifier |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>3. DATE RECEIVED BY STATE</b>   |  | State Application Identifier   |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>4. DATE RECEIVED BY FEDERAL AGENCY</b>  |  | Federal Identifier   |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>5. APPLICANT INFORMATION</b>  |  |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| Legal Name:  |  | Organizational Unit:   |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| Address (give city, county, state, and zip code):  |  | Name and telephone number of the person to be contacted on matters involving this application (give area code)   |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b><br><table style="width:100%; border: none;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table> |  |  |                      |            |             |   |  |  |  |  |  |  | <b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> <table style="width:100%; border: none;"> <tr> <td style="width: 50%;">A. State</td> <td style="width: 50%;">H. Independent School Dist.</td> </tr> <tr> <td>B. County</td> <td>I. State Controlled Institution of Higher Learning</td> </tr> <tr> <td>C. Municipal</td> <td>J. Private University</td> </tr> <tr> <td>D. Township</td> <td>K. Indian Tribe</td> </tr> <tr> <td>E. Interstate</td> <td>L. Individual</td> </tr> <tr> <td>F. Intermunicipal</td> <td>M. Profit Organization</td> </tr> <tr> <td>G. Special District</td> <td>N. Other (Specify) _____</td> </tr> </table> |              | A. State | H. Independent School Dist. | B. County | I. State Controlled Institution of Higher Learning | C. Municipal | J. Private University | D. Township | K. Indian Tribe | E. Interstate | L. Individual | F. Intermunicipal | M. Profit Organization | G. Special District | N. Other (Specify) _____ |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
|  |  |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| A. State   | H. Independent School Dist.                        |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| B. County  | I. State Controlled Institution of Higher Learning |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| C. Municipal   | J. Private University                              |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| D. Township  | K. Indian Tribe                                    |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| E. Interstate  | L. Individual                                      |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| F. Intermunicipal  | M. Profit Organization                             |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| G. Special District  | N. Other (Specify) _____                           |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>8. TYPE OF APPLICATION:</b><br><input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision<br>If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/><br>A. Increase Award    B. Decrease Award    C. Increase Duration<br>D. Decrease Duration    Other (specify): _____   |  | <b>9. NAME OF FEDERAL AGENCY:</b>  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> <table style="width:100%; border: none;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px; text-align: center;">9</td> <td style="border: 1px solid black; width: 20px; height: 20px; text-align: center;">3</td> <td style="border: 1px solid black; width: 20px; height: 20px; text-align: center;">6</td> <td style="border: 1px solid black; width: 20px; height: 20px; text-align: center;">2</td> <td style="border: 1px solid black; width: 20px; height: 20px; text-align: center;">3</td> </tr> </table> TITLE: Runaway and Homeless Youth Program   |  | 9  | 3                    | 6          | 2           | 3 | <b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b> |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| 9  | 3  | 6  | 2                    | 3          |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>   |  | <b>13. PROPOSED PROJECT:</b><br><table style="width:100%; border: none;"> <tr> <td style="border: 1px solid black; width: 50%;">Start Date</td> <td style="border: 1px solid black; width: 50%;">Ending Date</td> </tr> </table>   |                      | Start Date | Ending Date |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| Start Date   | Ending Date  |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>14. CONGRESSIONAL DISTRICTS OF:</b><br>a. Applicant<br>b. Project   |  | <b>15. ESTIMATED FUNDING:</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;"></td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>c. State</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> |                      | a. Federal | \$          |   |  |  |  |  |  |  |  | b. Applicant | \$       |                             |           |  |              |                       |             |                 |               | c. State      | \$                |                        |                     |                          |  |  |  |  |  | d. Local | \$ |  |  |  |  |  |  |  |  | e. Other | \$ |  |  |  |  |  |  |  |  | f. Program Income | \$ |  |  |  |  |  |  |  |  | g. TOTAL | \$ |  |  |  |  |  |  |  |  |
| a. Federal   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| b. Applicant   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| c. State   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| d. Local   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| e. Other   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| f. Program Income  | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| g. TOTAL   | \$   |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b><br>a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____<br>b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372<br><input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW   |  | <b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b><br><input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| <b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>  |  |  |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| a. Typed Name of Authorized Representative   |  | b. Title   | c. Telephone number  |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |
| d. Signature of Authorized Representative  |  | e. Date Signed   |                      |            |             |   |  |  |  |  |  |  |  |              |          |                             |           |  |              |                       |             |                 |               |               |                   |                        |                     |                          |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |                   |    |  |  |  |  |  |  |  |  |          |    |  |  |  |  |  |  |  |  |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
 Prescribed by OMB Circular A-102

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

OMB Approval No. 0348-0044

**BUDGET INFORMATION — Non-Construction Programs**

**SECTION A — BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds |                 | New or Revised Budget |                 | Total (g) |
|--|---|-----------------------------|-----------------|-----------------------|-----------------|-----------|
|  |   | Federal (c)                 | Non-Federal (d) | Federal (e)           | Non-Federal (f) |           |
| 1.                                     |   | \$                          | \$              | \$                    | \$              | \$        |
| 2.                                     |   |                             |                 |                       |                 |           |
| 3.                                     |   |                             |                 |                       |                 |           |
| 4.                                     |   |                             |                 |                       |                 |           |
| 5. TOTALS                              |   | \$                          | \$              | \$                    | \$              | \$        |

**SECTION B — BUDGET CATEGORIES**

| Object Class Categories                  | GRANT PROGRAM, FUNCTION OR ACTIVITY |     |     |     |     | Total (5) |
|--|-------------------------------------|-----|-----|-----|-----|-----------|
|  | (1)                                 | (2) | (3) | (4) | (5) |           |
| a. Personnel                             | \$                                  | \$  | \$  | \$  | \$  | \$        |
| b. Fringe Benefits                       |                                     |     |     |     |     |           |
| c. Travel                                |                                     |     |     |     |     |           |
| d. Equipment                             |                                     |     |     |     |     |           |
| e. Supplies                              |                                     |     |     |     |     |           |
| f. Contractual                           |                                     |     |     |     |     |           |
| g. Construction                          |                                     |     |     |     |     |           |
| h. Other                                 |                                     |     |     |     |     |           |
| i. Total Direct Charges (sum of 6a - 6h) |                                     |     |     |     |     |           |
| j. Indirect Charges                      |                                     |     |     |     |     |           |
| k. TOTALS (sum of 6i and 6j)             | \$                                  | \$  | \$  | \$  | \$  | \$        |
| 7. Program Income                        | \$                                  | \$  | \$  | \$  | \$  | \$        |

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| SECTION C - NON-FEDERAL RESOURCES   |                    |                                |                   |             |             |
|---|--------------------|--------------------------------|-------------------|-------------|-------------|
| (a) Grant Program   | (b) Applicant      | (c) State                      | (d) Other Sources | (e) TOTALS  |             |
| 8.  | \$                 | \$                             | \$                | \$          |             |
| 9.  |                    |                                |                   |             |             |
| 10.   |                    |                                |                   |             |             |
| 11.   |                    |                                |                   |             |             |
| 12. TOTALS (sum of lines 8 and 11)  | \$                 | \$                             | \$                | \$          |             |
| SECTION D - FORECASTED CASH NEEDS   |                    |                                |                   |             |             |
|   | Total for 1st Year | 1st Quarter                    |                   |             | 4th Quarter |
|   |                    | 1st Quarter                    | 2nd Quarter       | 3rd Quarter |             |
| 13. Federal   | \$                 | \$                             | \$                | \$          | \$          |
| 14. NonFederal  |                    |                                |                   |             |             |
| 15. TOTAL (sum of lines 13 and 14)  | \$                 | \$                             | \$                | \$          | \$          |
| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT |                    |                                |                   |             |             |
| (a) Grant Program   |                    | FUTURE FUNDING PERIODS (Years) |                   |             |             |
|   |                    | (b) First                      | (c) Second        | (d) Third   | (e) Fourth  |
| 16.   | \$                 | \$                             | \$                | \$          | \$          |
| 17.   |                    |                                |                   |             |             |
| 18.   |                    |                                |                   |             |             |
| 19.   |                    |                                |                   |             |             |
| 20. TOTALS (sum of lines 16 -19)  | \$                 | \$                             | \$                | \$          | \$          |
| SECTION F - OTHER BUDGET INFORMATION<br>(Attach additional Sheets if Necessary) |                    |                                |                   |             |             |
| 21. Direct Charges:   |                    |                                |                   |             |             |
| 22. Indirect Charges:   |                    |                                |                   |             |             |
| 23. Remarks   |                    |                                |                   |             |             |

A-B 4

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary  
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** — Show the amount of indirect cost.

**Line 6k** — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**INSTRUCTIONS FOR THE SF-424A (continued)**

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

|   |                |
|---|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE          |
| APPLICANT ORGANIZATION                      | DATE SUBMITTED |

# U.S. Department of Health and Human Services

## Certification Regarding

### Drug-Free Workplace Requirements

### Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and,
- (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and  
Voluntary Exclusion - Lower Tier Covered Transactions  
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

## Certification Regarding Lobbying

Certification for Contracts, Grants, Loans,  
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization

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| Authorized Signature | Title | Date |
|----------------------|-------|------|
|----------------------|-------|------|

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

A-B 12

## Appendix C—Program Performance Standards and National Runaway Switchboard Description

### I. Program Performance Standards

#### A. Overview

The program performance standards established by the Family and Youth Services Bureau for its funded centers relate to the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by the Bureau through a functional analysis of the service and administrative components of the runaway youth projects, and were revised based upon the contents and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of the Bureau and its funded centers in their implementation. The standards relate to the basic program components enumerated in section 312 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act.

The program performance standards are the general principles against which a judgment can be made to determine whether a service or an administrative component of a basic center has achieved a particular level of attainment.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the regional ACYF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards (and the Program Performance Standards Self-Assessment Instrument) are designed to

serve as a developmental tool, and are to be employed by both the project staff and the regional ACYF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

#### B. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. *Outreach.* The project shall conduct outreach efforts directed towards community agencies, youth, and parents.

2. *Individual Intake Process.* The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. *Temporary Shelter.* The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. *Individual and Group Counseling.* The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. *Family Counseling.* The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. *Service Linkages.* The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. *Aftercare Services.* The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. *Recreational Program.* The project shall provide a recreational/leisure time schedule of activities for youth admitted to the project for residential care.

9. *Case Disposition.* The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian(s), and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or

to an alternative living arrangement by the parent(s) or legal guardian(s), project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. *Staffing and Staff Development.* Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. *Youth Participation.* The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. *Individual Client Files.* The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth shall, at a minimum, include an intake form which minimally contains the basic background information required by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian(s) except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. *Ongoing Center Planning.* The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. *Board of Directors/Advisory Body (Optional).* It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under 13.

## II. National Runaway Switchboard

The National Runaway Switchboard/National Communication System is a confidential telephone information, referral and crisis counseling service to runaway and otherwise homeless youth and their families in the United States, including Alaska and Hawaii. It is also a technical resource to assist youth-serving agencies in delivering more effective services by facilitating communication among service providers about specific cases. In essence, the National Communications System is designed to provide a neutral and available channel of communication between runaway and homeless youth and their families and to refer runaway and otherwise homeless youth and their families to the appropriate agency for assistance with their immediate crisis as well as working toward resolving their long-term problems. The National Runaway Switchboard (NRS) has become a major conduit for the reunification of runaway youth and their families.

The significant reasons for the development of the NRS are: (1) The interstate nature of the runaway and homeless youth problem, and (2) the increased vulnerability of youth to various forms of exploitation when they are away from home and/or in unfamiliar environments.

Approximately 2.31 million youth have been served by NRS from 1975 to the present. The current grant to operate NRS is held by Metro Help, Inc., 3080 N. Lincoln, Chicago, Illinois 60614; Lora Thomas, Executive Director; telephone: (312) 880-9860.

## Appendix D—SPOC List

### Executive Order 12372—State Single Points of Contact

#### Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Tel. (205) 284-8905

#### Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue,

14th Floor, Phoenix, Arizona 85012, Tel. (602) 280-1315

#### Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

#### California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323-7480

#### Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

#### Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

#### Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-3326

#### District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004, Tel. (202) 727-9111

#### Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Tel. (904) 488-8114

#### Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington, Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656-3855

#### Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3085

#### Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782-8639

#### Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5610

*Iowa*

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281-3725

*Kentucky*

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564-2382

*Maine*

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289-3261

*Maryland*

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

*Massachusetts*

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Tel. (617) 727-7001

*Michigan*

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Tel. (517) 373-7111. Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-8223

*Mississippi*

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Tel. (601) 960-4280

*Missouri*

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751-4834

*Montana*

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Tel. (406) 444-5522

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, Tel. (702) 687-4420, ATTN: John B. Walker, Clearinghouse Coordinator

*New Hampshire*

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

*New Jersey*

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613. Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025

*New Mexico*

Dorothy E. (Duffy) Rodriguez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3840

*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474-1605

*North Carolina*

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499

*North Dakota*

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Tel. (614) 466-0698

*Oklahoma*

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 8601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

*Oregon*

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373-1998

*Pennsylvania*

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

*Rhode Island*

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the

Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734-0493

*South Dakota*

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

*Tennessee*

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1876

*Texas*

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463-1778

*Utah*

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 538-1547

*Vermont*

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

*Washington*

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Tel. (206) 753-4978

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

*Wisconsin*

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741. Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267

*Wyoming*

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

*Guam*

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agaña, Guam 96910, Tel. (671) 472-2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor,

Saipan, CM, Northern Mariana Islands  
96950

#### *Puerto Rico*

Patria Custodio/Israel Soto Marrero,  
Chairman/Director, Puerto Rico Planning  
Board, Minillas Government Center, P.O.  
Box 41119, San Juan, Puerto Rico 00940-  
9365, Tel. (809) 727-4444

#### *Virgin Islands*

Jose L. George, Director, Office of  
Management and Budget, Nos. 32 & 33  
Kongens Gade, Charlotte Amalie, V.I.  
00802, Tel. (809) 774-0750

### Appendix E—Regional Youth Contacts

Region I: Sue Rosen, Office of Human  
Development Services, John F. Kennedy  
Federal Building, Room 2011, Boston,  
Massachusetts 02203 (CT, MA, ME, NH,  
RI, VT), (617) 565-1144

Region II: Estelle Haferling, Office of Human  
Development Services, 26 Federal Plaza,  
Room 4149, New York, NY 10278 (NJ, NY,  
PR, VI), (202) 264-2974

Region III: David Lett, Office of Human  
Development Services, 3535 Market  
Street, Post Office Box 13714,  
Philadelphia, PA 19101 (DC, DE, MD, PA,  
VA, WV), (215) 590-1224

Region IV: Viola Brown, Office of Human  
Development Services, 101 Marietta  
Tower, Suite 903, Atlanta, GA 30323 (AL,  
FL, GA, KY, MS, NC, SC, TN), (404) 221-  
2128

Region V: William Sullivan, Office of Human  
Development Services, 105 West Adams,  
21st Floor, Chicago, IL 60603 (IL, IN, MI,  
MN, OH, WI), (312) 353-4241

Region VI: Ralph Rogers, Office of Human  
Development Services, 1200 Main Tower,  
20th Floor, Dallas, TX 75202 (AR, LA,  
NM, OK, TX), (214) 767-6596

Region VII: Steve Nash, Office of Human  
Development Services, Federal Office  
Building, Room 384, 601 East 12th Street,  
Kansas City, MO 64106 (IA, KS, MO, NE),  
(816) 426-5401

Region VIII: Bob Rease, Office of Human  
Development Services, Federal Office  
Building, 1961 Stout Street, 9th Floor,  
Denver, CO 80294 (CO, MT, ND, SD, UT,  
WY), (303) 844-3100

Region IX: Carolyn Mangrum, Office of  
Human Development Services, 50 United  
Nations Plaza, San Francisco, CA 94102  
(AZ, CA, HI, NV, American Samoa,  
Guam, Northern Mariana Islands,  
Marshall Islands, Federated States of  
Micronesia, Palau), (415) 550-7460

Region X: Steve Ice, Office of Human  
Development Services, 2201 Sixth  
Avenue, Mail Stop RX 32, Seattle, WA  
98121 (AK, ID, OR, WA), (206) 442-0482

### Appendix F—Coordinated Networks

Region I: Nancy Jackson, Massachusetts  
Committee for Children and Youth, 14  
Beacon Street, Suite 706, Boston, MA  
02108, (617) 742-8555

Region II: Margo Hirsch, Empire State  
Coalition, 686 Broadway, Suite 800, New  
York, NY 10012, (212) 777-8140

Region III: Nancy Johnson, Mid-Atlantic  
Network of Youth and Family Services,  
Inc., 1188 Prince Andrew Court,  
Pittsburgh, PA 15237, (412) 366-6562

Region IV: Gail L. Kurtz, Southeastern  
Network of Youth and Family Services,  
337 South Millidge Ave., Suite 209,  
Athens, GA 30605, (404) 354-4568

Region V: Barbara Rachelson, Michigan  
Network of Runaway and Youth  
Services, 115 West Allegany, Suite 310,  
Lansing, MI 48933, (517) 484-5262

Region VI: Theresa Andreas-Tod, Southwest  
Network of Youth Services, Inc., 404  
West 40th Street, Austin TX 78751, (512)  
459-1455

Region VII: Jack McClure, MLN.K.: A  
Network for Runaway and Homeless  
Youth, P.O. Box 12181, Parkview, MO  
64152, (816) 741-8700

Region VIII: Linda Wood, Mountain Plains  
Youth Network, 311 North Washington,  
Bismarck, ND 58501, (701) 255-7229

Region IX: Nancy Sefcik, Western States  
Youth Services, 221 Petaluma Blvd. So.,  
Suite B Sacramento, CA 94952, (707) 763-  
2213

Region X: Ginger Baggett, Northwest Network  
of Runaway and Youth Services, 94 Third  
Street, Ashland, OR 97502, (503) 482-8890

### Appendix G—Runaway and Homeless Youth Basic Center Grantees—Fiscal Year 1991

#### Region I

##### *Connecticut*

The Youth Shelter, 105 Prospect Street,  
Greenwich, CT 06830, Shari Shapiro, (203)  
661-2599, 1991

Youth Continuum of TRI-RYC, 844 Grand  
Avenue, New Haven, CT 06521, Michael  
Rowe, (203) 562-3396, 1991

Waterbury Youth Service System, 95 North  
Main Street, Waterbury, CT 06702, Tom  
Donaldson, (203) 754-2181, 1991

Council of Churches, 126 Washington  
Avenue, Bridgeport, CT 06604, John  
Cottrell, (203) 334-1121, 1992

Quinebaug Valley Youth Services Bureau,  
P.O. Box 812, North Grosvenordale, CT  
06255, Tracey Graham, (203) 923-9526, 1992

Educational Resources, 90 North Main Street,  
West Hartford, CT 06107, Selma Lobel,  
(203) 521-8035, 1993

##### *Maine*

New Beginnings, 491 Maine Street, Lewiston,  
ME 04240, Barbara Kawliche, (207) 946-  
7272, 1991

Youth and Family Services, P.O. Box 502,  
Skowhegan, ME 04976, Ronald Herbert,  
(207) 474-8311, 1992

Youth Alternatives of S. Maine, 175 Lancaster  
Street, Portland, ME 04101, Mike Tarpinian,  
(207) 874-1175, 1992

##### *Massachusetts*

The Bridge, 47 West Street, Boston, MA  
02111, Sister Barbara Whelan, (617) 423-  
9575, 1991

Wayside Community Programs, 4 Thurber  
Street, Framington, MA 01701, Eric Masi,  
(617) 872-5611, 1991

Brookline Community Mental Health Center,  
43 Garrison Road, Brookline, MA 02146,  
Joan Sokoloff, (617) 277-8107, 1991

Newton-Wellesley-Weston-Needham, 1301  
Centre Street, Newton, MA 02159, Jon  
Dunn, (617) 244-4802, 1992

Marathon of Rhode Island, 1303 Washington  
Street, Walpole, MA 02081, Roy Ross, (508)  
668-3631, 1992

Project RAP, 202 Rantoul Street, Beverly, MA  
01915, Nancy Pia, (508) 921-1292, 1993

Franklin/Hampshire Mental Health Center,  
17 New South Street, Northampton, MA  
01060, Deborah Ekstrom, (617) 732-3121,  
1993

The Key Program, 484 West Street, Pittsfield,  
MA 01201, Randy Brewer, (413) 442-1503,  
1993

YWCA of Western Massachusetts, 120 Maple  
Street, Hampden, MA 01103, Mary Reardon  
Johnson, (413) 732-3121, 1993

##### *New Hampshire*

Child and Family Services, 89 Hanover  
Street, Manchester, NH 03101, Reed Carver,  
(603) 668-1920, 1992

Community Youth Advocates, 36 Tremont  
Square, Claremont, NH 03743, Holly  
Johnson, (603) 543-0427, 1993

##### *Rhode Island*

Stopover Shelters, 3380 East Main Road,  
Portsmouth, RI 02871, Peter Marshall, (401)  
683-1824, 1991

##### *Vermont*

Washington County Youth Service Bureau,  
P.O. Box 627, Montpelier, VT 05601, Tom  
Howard, (802) 229-9151, 1992

#### Region II

##### *New Jersey*

Together, 7 State Street, Glassboro, NJ 08028,  
Susan Sasser, (609) 881-6100, 1991

Tri-County Youth Services, 435 Main Street,  
Paterson, NJ 07501, Gail Manning, (201)  
881-0280, 1991

Youth Coordinating Council, 306 Brookline  
Avenue, Cherry Hill, NJ 08002, Eleanor  
Stofman, (609) 667-8525, 1991

Somerset Youth Shelter, 49 Brahma Avenue,  
Bridgewater, NJ 08807, Jeffrey Fettko, (201)  
526-6605, 1991

Ocean's Harbor House, 2445 Windsor  
Avenue, Toms River, NJ 08754, Albert  
Borris, (201) 929-0660, 1991

Anchor House, 482 Centre Street, Trenton, NJ  
08611, Judith Donohoe, (609) 396-6329, 1992

Crossroads, P.O. Box 321, Lumberton, NJ  
08048, Mary Lou Bendit, (609) 261-5400,  
1992

Group Homes of Camden County, 35 S. 29th  
Street, Camden, NJ 08105, Sandra  
Mengestu, (609) 541-8283, 1992

Atlantic County Department of Social  
Services, 101 So. Shore Road, Northfield, NJ  
08225, Holly Azchowski, (609) 645-7700,  
1993

##### *New York*

Dutchess County, 22 Market Street,  
Poughkeepsie, NY 12601, Folomi Gray, (914)  
431-2021, 1991

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Roger Palma, (716) 473-2464, 1991

Society for Seamen's Children, 28 Bay Street, Staten Island, NY 10301, Ann Deinhardt, (718) 447-7740, 1991

Hillside Children's Center, 1183 Monroe Avenue, Rochester, NY 14620, Harry Lang, (716) 473-5150, 1991

Project Safe, 5 Catherine Street, Schenectady, NY 12307, Rev. Phillip Grigsby, (518) 374-2683, 1991

Project Equinox, 214 Lark Street, Albany, NY 12210, Donna McIntosh, (518) 465-9524, 1992

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886-1351, 1992

Town of Huntington Youth Bureau, 100 Main Street, Huntington, NY 11743, Paul Lowery, (516) 351-3061, 1992

YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901, Penny Smith, (607) 772-0340, 1992

Covenant House (Under 21), 460 West 41st Street, New York, NY 10036, Eleanor Miller, (212) 354-4323, 1992

Flowers With Care, 23-30 Astoria Boulevard, Astoria, NY 11102, Rev. James Harvey, (718) 728-9790, 1992

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679-9240, 1992

Nassau County Youth Board, 1 West Street, Mineola, NY 11501, Ann Irvin, (516) 535-5893, 1992

The Idyllic Foundation, Town and Country Plaza, Cazenovia, NY 13035-0455, Brian Burns, (315) 655-2704, 1992

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Marie Pracher, (518) 234-3581, 1993

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339-5640, 1993

Cortland County Community Action Program, 23 Main Street, Cortland, NY 13045, Sara Pines, (607) 753-6781, 1993

Pius XII Youth and Family Services, 338 Bellvale Lakes Road, Warwick, NY 10990, Bro. Robert Fontaine, (914) 469-9121, 1993

Promesa, Inc., 1776 Clay Avenue, Bronx, NY 10457, Felix Velazquez, (212) 991-4900, 1993

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479-1323, 1993

Westchester County Youth Bureau, 55 Church Street, White Plains, NY 10601, Toni Collarini, (914) 285-2745, 1993

*Puerto Rico*

El Pueblo del Nino, P.O. Box 788, Rio Grande, PR 00765, Elba Nazario, (809) 887-2225, 1991

The Salvation Army, 1327 Americo Miranda Avenue, Caparra Terrace, PR 00619, Marjorie Yambo, (809) 781-6883, 1991

Dispensario San Antonio, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843-1910, 1993

Office of Human Development, King's Court and Loiza Street, Santurce, PR 00914, Jesus Joel Perez, (809) 728-7474, 1993

Municipality of Aquadilla, P.O. Box 520—Victoria Station, Aquadilla, PR 00605, Ramon Calero, (809) 891-3965, 1993

*Virgin Islands*

Department of Human Services, Barbel Plaza South, Charlotte Amalie, VI 00801, Catherine Hills, (809) 774-4393, 1991

**Region III***Delaware*

Aid in Dover, 32 Lookerman Square, Dover, DE 19501, Beverly Williams, (302) 734-7610, 1991

Child, Inc., 11th and Washington Streets, Wilmington, DE 19801, Joseph Dell'Olio, (302) 655-3311, 1992

*District of Columbia*

Sasha Bruce Youthwork, 1022 Maryland Avenue NE., Washington, DC 20002, Deborah Shore, (202) 675-9340, 1991

American Youth Work Center, 1751 N Street NW., Washington, DC 20036, Bill Treanor, (202) 785-0764, 1992

*Maryland*

Southern Area Youth Services, P.O. Box 44408, Friendly, MD 20744, Thomas Merrick, (301) 292-3825, 1991

Youth Resources Center, 7300 New Hampshire Avenue, Takoma Park, MD 20912, Ellen Freeman, (301) 779-1257, 1991

Fellowship of Lights, Inc., 1300 North Calvert Street, Baltimore, MD 21202, Ross Pologe, (301) 837-8155

Boys & Girls Home of Montgomery County, 9601 Colesville Road, Silver Spring, MD, Quanah Parker, (301) 589-8444, 1991

St. Mary's County Board of County Commissioners, P.O. Box 653, Leonardtown, MD 20650, Carl Loffler, (301) 475-4464, 1993

*Pennsylvania*

Centre County Youth Service, 205 East Beaver Avenue, State College, PA 16801, Norma Keller, (814) 237-5731, 1991

Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 18019, David Gilgoff, (215) 691-1200, 1991

Whale's Tale, 250 Shady Avenue, Pittsburgh, PA 15206, Christopher Smith, (412) 621-8407, 1991

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Francis Stoffa, (215) 545-2910, 1992

Catholic Charities, P.O. Box 3551, Harrisburg, PA, Very Rev. Francis Kumontis, (717) 652-3934, 1992

Catholic Social Services, 33 E. Northampton, Wilkes-Barre, PA 18702, Thomas Cherry, (717) 824-5766, 1992

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, Ruth Richardson, (412) 766-2215, 1992

Alternatives Corporation, 360 King Street, Pottstown, PA 19464, Ronald Harris, (215) 327-1601, 1992

Youth in Action, 7th and Morton Avenue, Chester, PA 19013, Tommie Lee Jones, (215) 874-1407, 1993

Council of Three Rivers Indian Center, 200 Charles Street, Pittsburgh, PA 15238, Mimi Wagner, (412) 782-4457, 1993

Youth Services of Bucks County, 118-120 S. Bellevue Avenue, Penndel, PA 19047, Roger Dawson, (215) 752-7050, 1993

*Virginia*

Alexandria Community Y, 418 South Washington Street, Alexandria, VA 22314, Diane Halbrook, (703) 549-1111, 1991

Alternative House, P.O. Box 637, McLean, VA, Jim Warwick, (703) 356-6360, 1991

Family & Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard Lung, (804) 282-4255, 1992

Volunteer Emergency Foster Care, 2317 Westwood Avenue, Suite 109, Richmond, VA 23230, William Christian, (804) 353-4698, 1992

City of Roanoke, 836 Campbell Avenue, Roanoke, VA 24016, A. Krochalis, (703) 981-2776, 1992

Mother Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Susan Jones, (804) 498-4673, 1993

Central Virginia Child Development Association, P.O. Box 424, 810 E. High, Charlottesville, VA 22902, Betty Ann Hopke, (804) 977-4260, 1993

*West Virginia*

Daymark, 1583 Lee Street East, Charleston, WV 25311, Amy Buckingham, (304) 344-3527, 1992

Southwestern Community Council, 540 Fifth Street, Huntington, WV 25701, Joan Ross, (304) 525-5151, 1992

**Region IV***Alabama*

Shelby Youth Services, P.O. Box 1261, Alabaster, AL 35007, Lindsey Allison, (205) 663-6301, 1991

American Red Cross, 405 South First Street, Gadsden, AL 35901, Windell Jolley, (205) 547-9505, 1992

Mobile Mental Health Center, 2400 Gordon Smith Drive, Mobile, AL 36617, T. Edmund Lakeman, (205) 473-4423, 1992

Group Homes for Children, 880 South Lawrence, Montgomery, AL 36104, George Holy, (205) 834-5512, 1993

*Florida*

Corner Drugstore, 1300 Northwest 6th Street, Gainesville, FL 32601, Karen Crapo, (904) 377-2976, 1991

Someplace Else, 1315 Linda Ann Drive, Tallahassee, FL 32301, Diane Alexander, (904) 877-7993, 1991

Switchboard of Miami, 35 SW. 8th Street, Miami, FL 33130, Shirley Aron, (305) 358-1640, 1991

Miami Bridge, 1149 NW. 11th Street, Miami, FL 33136, Alice Davis, (305) 324-8953, 1991

Anchorage Children's Home, 707 North Cove Boulevard, Panama City, FL 32401, Barbara Cloud, (904) 7673-7102, 1991

Orange County Board of Commissioners, 1718 East Michigan Avenue, Orlando, FL 32806, Larry Jones, (305) 420-3620, 1991

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733, Roy Miller, (813) 526-1123, 1992

Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 725-6662, 1992

Youth and Family Alternatives, P.O. Box 1073, New Port Richey, FL 34291, Richard Hess, (813) 842-8060, 1992

Florida Keys Children's Shelter, 73 High Point Road, Plantation Key, FL 33070, E. Bricker, (305) 852-4246, 1992  
 Youth Services Center, P.O. Box 625, Merritt Island, FL 32952, Roger McDonald, (305) 452-0801, 1993  
 Youth Shelter of Southwest Florida, 2240 Broadway, Ft. Myers, FL 33901, Vernon Langford, (813) 337-1313, 1993  
 Lutheran Ministries of Florida, 1576 Airport Boulevard, Pensacola, FL 32504, W. David Braughton, (813) 287-2373, 1993

#### Georgia

The Bridge, 75 Peachtree Place NW., Atlanta, GA 30309, Ann Starr, (404) 881-8344, 1992  
 The Marshlands Foundation, 11 West Park Avenue, Savannah, GA 30401, Pat Peshoff, (404) 234-4048, 1992  
 Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Martha Mendenhall, (404) 548-5893, 1992  
 The Alcove, 507 East Church Street, Monroe, GA 30655, Cail Bayes, (404) 267-4571, 1993  
 Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Bryant Bradley, (912) 368-3344, 1993

#### Kentucky

Lexington-Fayette County Government, 536 West Third Street, Lexington, KY 40506, Kathy Noel, (606) 254-2501, 1991  
 YMCA of Greater Louisville, 1410 South First Street, Louisville, KY 40208, Elizabeth Triplett, (502) 637-6480, 1991  
 Brighton Center, P.O. Box 325, Newport, KY 41072, Kim Brooks, (606) 581-1111, 1992

#### Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39205, Gayle Watts, (601) 355-9639, 1993  
 Mississippi Children's Home, 1301 N. West Street, Jackson, MS 39205, Christopher Cherney, (701) 255-7229, 1993  
 Jackson County Civic Action Community, 5343 Jefferson, Moss Point, MS 39563, Billy Knight, (601) 769-3292, 1993

#### North Carolina

Haven House, 401 E. Whitaker Mill Road, Raleigh, NC 27608, Michael Rieder, (919) 755-6368, 1991  
 Catholic Social Services, 10 Cascade Avenue, Winston Salem, NC 27101, Rosemary Martin, (919) 727-0705, 1991  
 The Relatives, 1000 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377-060, 1992  
 Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723, Elizabeth Chambers, (704) 586-8958, 1992  
 Tuscarora Tribe, P.O. Box 1455, Pembroke, NC 28372, Chief Young Bear, (919) 521-8682, 1992  
 Cape Fear Substance Abuse/Crisis Line, 801 Princess Street, Wilmington, NC 28401, Carlene Jackson, (919) 343-0145, 1993  
 Youth Care, 211 S. Edgeworth Street, Greensboro, NC 27401, Charles Hodieme, (919) 378-9109, 1993  
 Lee County Youth Services, P.O. Box 1988, Sanford, NC 27330, Gordon Wicker, (919) 774-8404, 1993

#### South Carolina

Department of Youth Services (Crossroads), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1993  
 Department of Youth Services (Hope House), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1993  
 Department of Youth Services (Greenhouse), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758-0262, 1993

#### Tennessee

Oasis Center, P.O. Box 120655, Nashville, TN 37212, Mary Jane Dewey, (615) 329-8036, 1992  
 Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37197, Larry Feezel, (615) 524-2689, 1993  
 Hamilton County Government, 317 Oak Street, Chattanooga, TN 37403, Judi Byrd, (615) 757-2692, 1993  
 The Family Link, 1207 Peabody, Memphis, TN 38174, William Myers, (901) 725-6911, 1993

#### Region V

#### Illinois

Aunt Martha's, 224 Blackhawk, Park Forest, IL 60466, Steven McCabe, (312) 747-2701, 1991  
 Children's Home and Aid Society, 1819 South Neil, Champaign, IL 61820, Sharon Pierce, (217) 359-8815, 1991  
 Teen Living Programs, 3179 N. Broadway, Chicago, IL 60657, Patricia Berg, (312) 883-0025, 1991  
 LaSalle County Youth Service Bureau, 827 Columbus Street, Ottawa, IL 61350, Dave McClure, (815) 433-3953, 1991  
 Travelers and Immigrants Aid, 327 S. LaSalle, Chicago, IL 60604, Laura Friedman, (312) 435-4500, 1991  
 McHenry County Youth Service, 107 South Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338-7360, 1992  
 Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Conrad Steinhof, (618) 398-0900, 1992  
 Central Illinois Youth Service Bureau, 632 South Fourth Street, Springfield, IL 62703, Kaywin Davis, (217) 753-8300, 1992  
 Youth Attention Center, P.O. Box 606, Jacksonville, IL 62051, Jerome Noble, (217) 245-6000, 1992  
 Mental Health Services, 902 West Main Street, West Frankfort, IL 62896, William Young, (618) 937-6483, 1992  
 Northside Ecumenical Night Ministry, 835 West Addison, Chicago, IL 60613, Thomas Bahrens, (312) 935-3366, 1992  
 Omni Youth Services, 222 East Dundee Road, Wheeling, IL 60090, Dennis Depcik, (312) 541-0109, 1992  
 Youth Services Network, P.O. Box 62, Rockford, IL 61105, Arlene Jackson, (815) 877-1312, 1992  
 Naperville Community Outreach, 113 E. Van Buren, Naperville, IL 60540, John Prior, (312) 961-2992, 1993

#### Indiana

Crisis Center, Inc., 215 N. Grand Boulevard, Gary, IN 46403, Shirley Caylor, (219) 960-4207, 1991  
 Monroe County Youth Service Bureau, 1310 East Atwater Avenue, Bloomington, IN

47401, Roberta Wysong, (312) 333-3506, 1991  
 Indiana Juvenile Justice Task Force, 3050 North Meridian, Indianapolis, IN 46208, James Miller, (317) 826-6100, 1992  
 Children's Bureau of Indianapolis, 615 N. Alabama Street, Indianapolis, IN 46204, Kenneth Phelps, (317) 634-6481, 1992  
 Youth Service Bureau, 222 Lincolnway West, South Bend, IN 46628, Bonnie Strycker, (219) 284-9231, 1993  
 Park Center, 909 E. State Boulevard, Fort Wayne, IN 46805, John Garner, (219) 424-7476, 1993  
 Stopover, 445 N. Penn Street, Indianapolis, IN 46204, Carol D'Amora, (317) 635-9301, 1993  
 Clark County Youth Shelter, 116 East Chestnut Street, Jeffersonville, IN 47130, Sherry Zachariah, (812) 284-5229, 1993

#### Michigan

The Sanctuary, 1232 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547-2260, 1991  
 Gateway Community Services, Equal Ground, 910 Abbott Road, Suite 100, East Lansing, MI 48823, Robert Sheehan, (517) 351-4000, 1991  
 Comprehensive Youth Services (Macomb), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463-7079, 1992  
 Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Polly Learned, (616) 983-6351, 1992  
 Bethany Christian Services, 6995 West 48th, Fremont, MI 49412, Dale Painter, (616) 924-3390, 1992  
 Youth Living Centers, 715 S. Inkster, Inkster, MI 48141, Barry Manning, (313) 538-5005, 1992  
 Listening Ear Crisis Center, 107 E. Illinois Avenue, Mt. Pleasant, MI 48858, Don Schuster, (517) 772-2919, 1992  
 Comprehensive Youth Services (Harbor), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463-7079, 1993  
 Catholic Family Services, 1619 Gull Road, Kalamazoo, MI 49001, John Hemmer, (616) 381-9800, 1993  
 Cory Place, 812 N. Jefferson, Bay City, MI 48706, Mary Jo Tompkins, (517) 895-5563, 1993  
 Saginaw County Youth Council, 1110 Howard, Saginaw, MI, Ron Spess, (517) 752-5175, 1993  
 Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356-3474, 1993  
 League of Catholic Women (Off The Streets), 120 Parsons Street, Detroit, MI 48201, David Sutner, (313) 831-1000, 1993  
 Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Douglas Ellis, (616) 458-7434, 1993  
 Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Lisa Wolf, (313) 662-2265, 1993  
 Every Woman's Place, 1706 Peck Street, Muskegon, MI 49442, Judith Hayner, (616) 726-4493, 1993

#### Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377-8800, 1992

St. Paul Youth Service Bureau, 1619 Dayton Avenue, St. Paul, MN 55104, Raeone Buckman-Ellis, (612) 292-7191, 1992  
 Evergreen House, 921 Minnesota Avenue, Bemidji, MN 56601, Julie Portesan, (218) 751-4332, 1993  
 Red School House, 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227-4184, 1993  
 Lutheran Social Services, 600 Ordean Building, Duluth, MN 55802, John Moline, (218) 626-2728, 1993

**Ohio**

New Life Youth Services, 6128 Madison Road, Cincinnati, OH 45227, Debbie Latter, (513) 561-0100, 1991  
 Free Medical Clinic, 12201 Euclid Avenue, Cleveland, OH 44106, Rebecca Devenanzio, (216) 421-2000, 1991  
 Clermont County Community Services, 2291 Bauer Road, Batavia, OH 45103, Martha Undercoffer, (513) 732-7182, 1991  
 Connecting Point, 3301 Collingwood Boulevard, Toledo, OH 43610, Carole Smith, (419) 243-6326, 1991  
 Daybreak, 819 Wayne Avenue, Dayton, OH 45410, David Nehring, (513) 461-1000, 1991  
 Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294-8097, 1992  
 Safe Landing Youth Shelter, 680 E. Market Street, Akron, OH 44303, David Fair, (216) 376-4200, 1992  
 Children's and Family Service, 21 Indiana Avenue, Youngstown, OH 44505, Gerald Janosik, (216) 782-5664, 1993  
 Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548-8002, 1993  
 Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 324-6113, 1993

**Wisconsin**

Walker's Point Youth Center, 732 S. 21st Street, Milwaukee, WI 53204, Andre Olton, (414) 647-8200, 1991  
 Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403, Jane Karas, (414) 637-9557, 1991  
 Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, WI 53704, Patricia Balke, (608) 241-2649, 1991  
 Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251-1128, 1992  
 Counseling Center of Milwaukee, 2038 N. Bartlett, Milwaukee, WI 53202, David Cobb, (414) 271-2565, 1992

**Region VI****Arkansas**

Stepping Stone, Inc., 6501 W. 12th Street, Little Rock, AR 72204, Judy Kane, (501) 562-1809, 1991  
 Consolidated Youth Services, 4220 Stadium Boulevard, Jonesboro, AR 72401, Bonnie Stevens, (501) 972-1110, 1991  
 Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Michael Lee, (501) 632-4618, 1992  
 Comprehensive Juvenile Services, 1606 South J. Fort Smith, AR 72901, Jerry Robertson, (501) 785-4031, 1992

**Louisiana**

Safety Net, Inc., P.O. Box 72, Baton Rouge, LA 70821, Lil Veal, (504) 383-7286, 1991  
 Community Recreational Home, 7997 Bayou Rapids Road, Alexandria, LA 71306, Robert Tillie, (318) 473-0530, 1992  
 Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345-1171, 1993  
 Education Treatment Council, 146 Hodges Street, Lake Charles, LA 70601, Giles Gilliam, (318) 433-1062, 1993

**New Mexico**

Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Betty Rangel, (505) 473-0204, 1991  
 New Day, 1817 Sigma Chi N.E., Albuquerque, NM 87106, Jeff Burrows, (505) 247-9559, 1992  
 Youth Development, 1710 Centro Familiar SW., Albuquerque, NM 87105, Augustine C. Baca, (505) 873-1604, 1993

**Oklahoma**

Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK, Gwen Grayson, (918) 456-0671, 1992  
 Northern Oklahoma Youth Services Center, 415 W. Grand, Ponca City, OK 74601, Richard Mauldin, (405) 762-8341, 1992  
 Youth Services of Tulsa County, 1415 E. 8th Street, Tulsa, OK 74120, Janis Walker, (918) 582-0061, 1992  
 Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Warren Wells, (405) 262-6555, 1992  
 Northwest Family Services, 326 7th Street, Alva, OK 73717, John Jones, (405) 327-2900, 1992  
 Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255-8800, 1992  
 Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Darla Fore, (405) 233-7220, 1992  
 Payne County Youth Services, 2224 W. 12th, Stillwater, OK 74076, Jim Lunsford, (405) 377-3380, 1992  
 Youth Services for Oklahoma County, 2915 N. Lincoln, Oklahoma City, OK 73105, Sharon Wiggins, (405) 235-7537, 1993  
 Marie Detty Youth and Family Service Center, 811 South 17th Street, Lawton, OK 73501, Paul Smith, (405) 248-6450, 1993

**Texas**

Middle Earth Unlimited, 3708-B South Second Street, Austin, TX 78704, Mitch Weynand, (512) 482-8322, 1991  
 Lovers Lane, 9200 Inwood Road, Dallas, TX 75220, Charles Green, (214) 691-4721, 1991  
 Sand Dollar, 103 West Park Lane, Pasadena, TX 77506, John Miller, (713) 473-9135, 1991  
 Sabine Valley MHMR Center, P.O. Box 6800, Longview, TX 75608, Ron Cookston, (214) 297-2191, 1991  
 Catholic Family Services, P.O. Box 15127, Amarillo, TX 79105, James Rogers, (806) 376-4571, 1991  
 Carrollton Youth Advocacy Council, 3945 North Josey Lane, Carrollton, TX 75007, Bill Sigsbee, (817) 273-2084, 1991  
 Collin Intervention to Youth, 1111 Avenue H, Plano, TX 75074, Kay Goodman, (214) 881-8010, 1991

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Jan Viles, (817) 877-1121, 1991  
 East Texas Open Door, 414 West Burleson Street, Marshall, TX 75670, William Power, (214) 938-1211, 1991  
 Comal County Juvenile Resident, 1414 W. San Antonio Street, New Braunfels, TX 78130, Nancy Ney, (512) 629-4329, 1992  
 Houston Metropolitan Ministeries, 2001 Huldy, Houston, TX 77006, Theodore Shorten, (713) 527-8218, 1992  
 The Bridge Association (Spruce), 115 West Broadway, Fort Worth, TX 76104, Gary Metcalf, (817) 926-9184, 1992  
 Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340-8077, 1992  
 Youth Alternatives (Stepping Stone), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340-8077, 1992  
 Tropical Texas Center, P.O. Drawer 1108, Edinburg, TX 78540, Polly Adams, (512) 383-0121, 1992  
 Depelchin Children's Center, 100 Sandman, Houston, TX 77007, Lloyd Lenarz, (713) 861-8136, 1992  
 Greater San Marcos Youth Shelter, P.O. Box 1455, San Marcos, TX 78667, Jim Grouchy, (512) 754-0500, 1992  
 El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565-8361, 1993  
 YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Hamilton, (214) 954-0655, 1993  
 Central Texas Youth Services Bureau, 703 Parmer Street, Killeen, TX 76640, Robert Butts, (817) 634-2085, 1993  
 The Children's Center, 2127 Avenue M, Galveston, TX, Donald Loving, (409) 765-5212, 1993  
 Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock, Houston, TX 77081, Ann Hibbert, (713) 526-5701, 1993  
 Montgomery County Youth Services, P.O. Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756-8682, 1993  
 Harris County Children's Protective Services (Community Youth Services), 6425 Chimney Rock, Houston, TX 77081, Ann Hibbert, (713) 526-5701, 1993

**Region VII****Iowa**

Christian Home Association, North 6th and Avenue E, Council Bluffs, IA 51502, Andrew Ross, (712) 325-1910, 1991  
 Youth and Shelter Services, 217 Eighth Street, Ames, IA 50010, George Belitsos, (515) 233-3141, 1992  
 United Action for Youth, 311 N. Linn Street, Iowa City, IA 52240, Jim Swaim, (319) 338-7518, 1993  
 Foundation II, 1251 Third Avenue, SE., Cedar Rapids, IA 52403, Steve Meyer, (319) 362-2176, 1992  
 Valley Shelter Homes, 942 Marquette Street, Davenport, IA 52804, John McBride, (319) 323-8094, 1991

**Kansas**

- Wyandotte House, 632 Tauomee, Kansas City, KS 66101, Wayne Sims, (913) 342-9332, 1992
- United Methodist Youthville, 900 W. Broadway, Newton, KS 67114, Shirley Dwyer, (316) 283-1950, 1993
- Temporary Lodging for Children, 333 E. Poplar, Olathe, KS 66061, Carolyn Thomas, (913) 345-2425, 1993

**Missouri**

- Youth Emergency Service, 6816 Washington Avenue, University City, MO 63130, Linda James, (314) 862-1334, 1991
- Comprehensive Human Services, 707 North Eighth Street, Columbia, MO 65201, Charles Servey, (314) 874-8686, 1991
- Youth in Need, 529 Jefferson, St. Charles, MO 63301, Liza Andrew-Miller, (314) 724-7171, 1991
- Asylum of St. Louis (Marian Hall), 325 N. Newstead, St. Louis, MO 63108, Patricia Bednara, (314) 531-0511, 1992
- Synergy House, P.O. Box 12181, Parkville, MO 64152, Jack McClure, (816) 741-8700, 1993

**Nebraska**

- Father Flanagan's Boys' Home, Boys Town Center, Boys Town, NE 68502, Karen Authier, (402) 475-3040, 1991
- Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, Mary Fran Flood, (402) 475-3040, 1992
- Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Robert Knott, (402) 345-5187, 1993
- Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341, Ruth Vance, (308) 635-3089, 1993

**Region VIII****Colorado**

- Let's Work it Out, 902 Taughenbaugh, #303, Rifle, CO 81650, Patti Phelps, (303) 625-3141, 1991
- Attention, Inc. P.O. Box 907, Boulder, CO 80306, Brie Timms, (303) 447-1206, 1991
- Gemini House (Family Tree), 3805 Marshall Street, Wheatridge, CO 80033, Gail Penney, (303) 235-0630, 1991
- Denver Alternative Youth Services, 1240 W. Bayaud Avenue, Denver, CO 80223, Rhonda Cannon, (303) 898-2300, 1991
- Human Services, Inc., 838 Grant Street, Suite 400, Denver, CO 80203, Sally Butler, (303) 429-4440, 1991
- Comitis Crisis Center, 9840 E. 17th Street, Aurora, CO 80040, Richard Barnhill, (303) 341-9160, 1991
- Larimer County Shelter Care, 4432 Poco Drive, Fort Collins, CO 80525, Eric Busch, (303) 226-6984, 1991
- Young Life (Dale House), 821 N. Cascade Avenue, Colorado Springs, CO 80903, George Sheffer III, (303) 471-0642, 1992
- Capital Hill United, 1290 Williams Street, Denver, CO 80218, Gary Sanford, (303) 388-2716, 1992
- Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297-0408, 1993
- Pueblo Youth Service Bureau, 612 West 10th Street, Pueblo, CO 81003, Molly Melendez, (303) 542-5161, 1993

- Messa County Department of Social Services, P.O. Box 20000-5035, Grand Junction, CO 81502-5035, Anthony Silva, (303) 241-8480, 1993

- Ute Mountain Ute Nation, Sunrise Youth Shelter, General Delivery, Towaoc, CO 81334, Rita Arnett, (303) 565-3751, ext. 213, 1993

**Montana**

- Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255-7229, 1992
- Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338-5871, 1992

**North Dakota**

- Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255-7229, 1992

**South Dakota**

- Mountain Plains Youth Services, 1206 North Third Street, Aberdeen, SD 57401, Linda Wood, (701) 255-7229, 1992
- Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Marilyn Gangone, (605) 747-2381, 1993

**Utah**

- Department of Social Services, 120 North 200 West, 4th Floor, Salt Lake City, UT 84110, Jean Nielson, (801) 538-4100, 1993

**Wyoming**

- Mountain Plains Youth Services, 20 W. Works, Sheridan, WY 82801, Linda Wood, (701) 255-7220, 1992
- Attention Home, P.O. Box 687, Cheyenne, WY 82003, Jim Cosgrove, (307) 778-2990, 1992

**Region IX****Arizona**

- Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004, Michael Garvey, (602) 271-9849, 1991
- Open-Inn, 4810 E. Broadway, Tucson, AZ 85711, Darlene Dankowski, (602) 323-0200, 1991
- The Navajo Nation, P.O. Box 1559, Window Rock, AZ 86515, Irving Toddy, (602) 871-6744, 1991
- Our Town Family Center, P.O. Box 26504, Tucson, AZ 85726, Dennis Noonan, (602) 323-1708, 1992
- Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Charlene Hicks, (602) 783-2427, 1993

**California**

- Individuals Now, 1303 College Avenue, Santa Rosa, CA 95404, Adam Jacobs, (707) 544-3299, 1991
- C.S.P. South County Youth Shelter, 980 Catalina, Laguna Beach, CA 92651, Karen Cervenka, (714) 494-4311, 1991
- Butte County Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Alex Collins-Thomas, (916) 534-4211, 1991
- Travelers Aid Society, 453 South Spring Street, Suite 90, Los Angeles, CA 90013, Wayne Hinrichs, (213) 625-2501, 1991
- Redwood Community Action Agency, 904 G Street, Eureka, CA 95501, Peter LaVallee, (707) 443-8322, 1991

- Santa Clara Social Advocates, 509 View Street, Mountain View, CA 94041, Paul Schutz, (408) 253-3540, 1991
- Los Angeles Youth Network, 1944 N. Cahuenga Boulevard, Los Angeles, CA 90068, John Peel, (213) 466-6200, 1991
- Central City Hospitality House, 146 Leavenworth Street, San Francisco, CA 94102, Ann O'Halloran, (415) 776-2101, 1991
- Catholic Charities, 1400 W. 9th Street, Los Angeles, CA 90015, Bill White, (213) 251-3496, 1991
- San Diego Youth and Community Services, 3878 Old Town Avenue, San Diego, CA 92110, Liz Shear, (619) 297-9310, 1991
- Interface Community, 1305 Del Norte Road, Camarillo, CA 93010, Charles Watson, (805) 485-6114, 1991
- Youth Advocates (Nine Grove Lane), 285-12th Avenue, San Francisco, CA 94118, Bruce Fisher, (415) 668-2622, 1991
- Youth Advocates (Huckleberry House), 285-12th Avenue, San Francisco, CA 94118, Bruce Fisher, (415) 668-2622, 1991
- Ocean Park (Stepping Stone), 1833-18th Street, Santa Monica, CA 90404, Amy Somers, (213) 450-7839, 1992
- Santa Cruz Community Center, 117 Union Street, Santa Cruz, CA 95060, Mary Sims, (408) 425-0771, 1992
- Tahoe Human Services, P.O. Box 848, South Lake Tahoe, CA 95705, David Hampton, (916) 541-2445, 1992
- Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564-7830, 1992
- Diogenes Youth Services (Yolo), 2555 Third Street, Sacramento, CA 95818, Lyn Cottingham, (916) 363-9943, 1992
- YMCA of San Diego County, 7510 Clairemont Mesa Boulevard, San Diego, CA 92111, Beverly DiGregorio, (619) 234-1871, 1992
- San Diego Youth Involvement, 626 South 28th Street, San Diego, CA 92113, Sandra Sandoal, (619) 234-1871, 1992
- Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984-5955, 1992
- South Bay Community Services, 429 Third Avenue, Chula Vista, CA 92010, Kathryn Schroeder, (619) 420-3620, 1992
- Mendocino County Schools, 518 Low Gap Road, Ukiah, CA 95482, Jim Levine, (707) 463-4915, 1992
- Casa de Bienvenidos, P.O. Box 216, Los Alamitos, CA 90720, Darwin Wagner, (213) 594-8825, 1992
- Diogenes Youth Services (Sacramento), 2555 Third Street, Sacramento, CA 95814, Lyn Cottingham, (916) 363-9943, 1992
- 1736 Family Crisis Center, 1736 Monterey Boulevard, Hermosa Beach, CA 90254, Carol Adelfoff, (213) 372-4674, 1992
- Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Diane Flannery, (415) 673-0911, 1992
- National Center for Immigrant Rights, 256 S. Occidental Boulevard, Los Angeles, CA 90057, Cameryn Schmidt, (213) 388-8693, 1992
- Klein Bottle, 412 East Tunnell Street, Santa Maria, CA 93454, David Edelman, (805) 922-0468, 1992

Western Youth Services, 204 E. Amerige Avenue, Fullerton, CA 92632, Jeff Harris, (714) 525-5838, 1993

Children's Home Society, 3200 Telegraph Avenue, Oakland, CA 94609, Pat Reynolds, (415) 655-7406, 1993

Community Human Services, P.O. Box 3076, Monterey, CA 93942, Jo Kenny, (408) 373-3641, 1993

Youth and Family Assistance, 609 Price Avenue, Redwood, CA 94063, Richard Gordon, (415) 366-8401, 1993

Department of Social Services, 4455 E. Kings Canyon Road, Fresno, CA 93750, Robert Whittaker, (209) 453-6406, 1993

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526-1440, 1993

Los Padrinos of Southern California, 585 N. Mt. Vernon Avenue, San Bernardino, CA 92411, Timothy Gergen, (714) 888-5781, 1993

Youth and Family Assistance, 609 Price Avenue, Redwood City, CA 94063, Richard Gordon, (415) 366-8401, 1993

Orange County Youth and Family Services, 2050 W. Chapman Avenue, Orange, CA 92668, Kevin Meehan, (714) 978-6896, 1993

**Hawaii**

Hawaii Youth Shelter Network, 2146 Damon Street, Honolulu, HI 96822, Sam Cox, (808) 946-3635, 1991

**Nevada**

Community Runaway and Youth Service, 1135 Terminal Way, Reno, NV 89502, Carol Holliday, (702) 323-6296, 1991

Western Counseling Association, 401 S. Highland Drive, Las Vegas, NV 89106, Richard Steinberg, (702) 385-2020, 1991

**Palau**

Palau Community Action Agency, P.O. Box 3000, Koror, Republic of Palau 96940, Doroteo Nagata, 1993, Phone: 4882-469 (Operator Assistance Needed)

**Guam**

Sanctuary, P.O. Box 21030, Guam Main Facility, Guam, CM 96921, Tony Champaco, (671) 734-2661, 1993

**CNMI**

Commonwealth of the Marianas, Department of Community Cultural Affairs, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 322-9366, 1993

**Region X****Alaska**

Juneau Youth Services, P.O. Box 32839, Juneau, AK 99803, Betty Jo Engelman, (907) 789-7610, 1991

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274-6541, 1992

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452-6201, 1992

**Idaho**

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234-2244, 1992

Hays Shelter Home, 1122 Wild Phlox Way, Boise, ID 83709, Tracy Everson, (208) 322-6744, 1992

**Oregon**

Janis Youth Programs, 738 N.E. Davis, Portland, OR 97232, Dennis Morrow, (503) 233-6090, 1991

Looking Glass, 44 West Broadway, Eugene, OR 97401, Galen Phipps, (503) 689-3111, 1991

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779-2393, 1992

Northwest Human Services, 555-13th Street, Salem, OR 97301, Mary Beth Thompson, (503) 588-5826, 1993

J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389-1409, 1993

**Washington**

Friends of Youth, 2500 Lake Washington Blvd. N., Renton, WA 98056, J. Howard Finck, (206) 228-5775, 1991

Northwest Youth Services, P.O. Box 1449, Bellingham, WA 98227, Michael Tyers, (206) 734-9862, 1991

Youth Help Association, West 1101 College #360, Spokane, WA 99201, Patt Earley, (509) 326-9553, 1991

Seattle Youth and Community Services, 1545-12th Avenue South, Seattle, WA 98144, Victoria Wagner, (206) 322-7927, 1992

Community Youth Services, 924 Fifth Avenue, SE., Olympia, WA 98501, Barbara Branstetter, (206) 943-0780, 1993

Auburn Youth Resources, 816 F Street, SE., Auburn, WA 98002, Richard Brugger, (206) 939-2202, 1993

Pierce County Alliance, 7101 S. Fawcett, Tacoma, WA 90402, Terree Schmidt-Whelan, (206) 572-4750, 1993

[FR Doc. 91-2392 Filed 2-1-91; 8:45 am]

BILLING CODE 4130-01-M

# **federal register**

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**Monday  
February 4, 1991**

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**Part V**

**Department of  
Education**

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**School Dropout Demonstration  
Assistance Program; Notice Inviting  
Applications for New Awards for Fiscal  
Year (FY) 1991**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.201]

**School Dropout Demonstration Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* To provide Federal financial assistance to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

*Eligible Applicants:* The following are eligible for new awards under this competition: Local educational agencies, community-based organizations, and educational partnerships.

*Deadline for Transmittal of Applications:* March 22, 1991.

*Deadline for Intergovernmental Review:* May 21, 1991.

*Available Funds:* \$32,600,000.

*Estimated Range of Awards:* (a) Restructuring and reform projects: \$750,000-\$1,500,000; (b) Targeted programs for at-risk youth and field-initiated projects: \$250,000-\$750,000.

*Estimated Average Size of Awards:* (a) Restructuring and reform projects: \$1,000,000; (b) Targeted programs for at-risk youth and field-initiated projects: \$500,000.

*Estimated Number of Awards:* (a) Restructuring and reform projects: 15; (b) Targeted programs for at-risk youth and field-initiated projects: 35.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide

Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

*Description of Program:* Title VI, parts A and C of Public Law 100-297 (The School Dropout Demonstration Assistance Act of 1988) establishes a program of grants to eligible entities to pay the Federal share of the cost of authorized activities. While your attention is called to the text of these provisions, the following is a summary of some of the pertinent parts of that legislation.

**Purpose**

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate (1) effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

**Funding Categories**

The Secretary will allot fiscal year (FY) 1991 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, \$8,150,000 for FY 1991); (2) LEAs administering schools with a total enrollment of at least 20,000, but less than 100,000, (40 percent of the amount appropriated, \$13,040,000 for FY 1991); (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, \$9,780,000 for FY 1991); and (4) community-based organizations (5 percent of the amount appropriated, \$1,630,000 for FY 1991). For category (3), grants may be made to intermediate educational units and consortia of not more than 5 LEAs if the total enrollment of the largest of these LEAs is less than 20,000 elementary and secondary school

students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

**Educational Partnerships**

In each of the first three categories mentioned under Funding Categories, the Secretary will allot not less than 25 percent and not more than 50 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; and (2) a business concern, or business organization, or, if an appropriate business concern or business organization is not available, one of the following: any community-based organization; nonprofit private organization, institution of higher education, State educational agency, State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

**Distribution of Funds**

The Secretary ensures that, to the extent practicable, in approving grant applications: grants will be equitably distributed on a geographic basis within each enrollment size category; the amount of a grant to a local educational agency will be proportionate to the extent and severity of the local school dropout problem; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

**Limitation on Costs**

Not more than 5 percent of any grant may be used for administrative costs.

**Federal Funds**

The Federal share of a grant under this program will not exceed 90 percent of the total cost of a project for the first year and 75 percent of the total cost for the second year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be cash or in kind.

**Applications**

Grants may be made only to an LEA, an educational partnership, or a

community-based organization that submits an application to the Secretary.

Applications must contain (1) documentation of the number of children who were enrolled in the schools of the applicant for five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as dropouts; (2) documentation of the percentage that such number of children is of the total school-age population in the applicant's schools; (3) a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the problem; (4) a plan for coordinated activities involving at least 1 high school and its feeder junior high or middle schools and elementary schools for local educational agencies that have feeder systems; and (5) a plan for the development and implementation of a project that will include activities designed to carry out the purpose of the program.

#### Allowable Activities

The plan referred to in paragraph (4) of the *Applications* section may include activities that: (1) Implement identification, prevention, outreach, or reentry projects for dropouts and potential dropouts; (2) address the special needs of school-age parents; (3) disseminate information to students, parents, and the community related to the dropout problem; (4) as appropriate, include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act; (5) involve the use of educational telecommunications and broadcasting technologies, and educational materials for dropout prevention, outreach, and reentry; (6) focus on developing occupational competencies that link job skill preparation and training with genuine job opportunities; (7) establish annual procedures for (i) evaluating the effectiveness of the project, and (ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country; (8) coordinate, to the extent practicable, with other student dropout activities in the community; or (9) use the resources of the community and parents to help develop and implement solutions to the local dropout problem.

#### Authorized Activities

In addition to the activities mentioned under *Allowable Activities*, grants may

also be used for educational, occupational, and basic skills testing services and activities, including, but not limited to: (1) The establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry; (2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school; (3) the establishment or expansion of work-study, apprentice, or internship programs; (4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population; (5) the evaluation and revision of program placement of students at risk; (6) the evaluation of program effectiveness or dropout programs; (7) the development and implementation of programs for traditionally underserved groups of students; (8) the implementation of activities that will improve student motivation and the school learning environment; (9) the provision of training for school staff on strategies and techniques designed to identify children at risk of dropping out, intervene in the instructional program with support and remedial services, develop realistic expectations for student performance, and improve student-staff interactions; (10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and youth gang prevention community organizations; (11) the study of the relationship between handicapping conditions and student dropouts; (12) the study of the relationship between the ratio of dropouts among gifted and talented students compared to the ratio of dropouts among the general student enrollment; (13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and (14) the provision of other educational, occupational, and testing services and activities that directly relate to the purpose of the program.

#### Activities for Educational Partnerships

Grants under this program may be used by educational partnerships for: (1)

Activities that offer jobs and college admission for successful completion of the program for which assistance is sought; (2) internship, work study or apprenticeship programs; (3) summer employment programs; (4) occupational training programs; (5) career opportunity and skills counseling; (6) job placement services; (7) the development of skill employment competency testing programs; (8) special school staff training projects; and (9) any other activity described under *Authorized Activities*.

#### Supplement, not Supplant

LEAs must use Federal funds received under this program only to supplement the funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the activities described above.

#### Coordination and Dissemination

LEAs receiving funds under this program must cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

*Absolute Priorities:* The Secretary gives an absolute preference to applications that meet the following statutory priority in section 3245(c) of title 20 of the United States Code:

Applications must propose projects that both replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency; and reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

Under 20 U.S.C. 3245(c) and 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority. Applications that do not meet the requirements of this priority will not be considered.

With approximately 80 percent of the appropriated funds, the Secretary gives an absolute preference to applications that also meet either one of the following priorities in addition to the statutory priority referenced above:

#### (a) Restructuring and reform.

Under this priority, applicants may apply for grants to restructure the education programs for a school cluster—that is, a high school and its feeder elementary and middle schools. In school districts that offer open enrollment, the schoolwide restructuring must occur at a high school and its dominant feeder elementary and middle schools. Restructuring will require schoolwide change, and a proposed project must include at least the

following components at each school level:

(1) Autonomy for both principals and teachers to determine curriculum and instruction strategies. (This may include such activities as the following: setting school performance goals, structuring schedules and patterns for daily instruction, initiating new programs and activities, or evaluating achievement.)

(2) Interesting and challenging curricula that move students along as fast as their capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(3) A school climate where students are made to feel that they are an important and integral part of the school and interaction between students and adults is encouraged. (Implementation strategies may include, but are not limited to, counseling, mentoring, team teaching, dividing schools into smaller entities, and recognition of students' cultural heritage.)

(4) Systematic monitoring of attendance and follow-up of absences with students and parents.

(5) Alternatives to standard retention practices (such as promotion with special assistance).

(6) Coordination of services to meet at-risk students' multiple needs (through such approaches as case management).

(7) Policies and procedures to ensure communication among schools in the project and to facilitate a student's transition from elementary to middle to high schools.

(8) Parent and community involvement (using such means as parent advisory councils, volunteer groups, or school-based management teams).

(9) Staff training to provide for effective operation of the program.

(b) *Targeted programs for at-risk youth.*

Under this priority, applicants may apply for grants to support projects that involve comprehensive targeted services for at-risk youth. These projects may include, but are not limited to, such approaches as special programs for at-risk youth in regular schools, a "school within a school," alternative schools that serve only at-risk youth, or other similar arrangements. In order to qualify for funding under this priority, a proposed project must include at least the following components:

(1) Accelerated learning strategies for improving academic performance and interesting and challenging curricula that move students along as fast as their

capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(2) Systematic monitoring of attendance and follow-up of absences with parents.

(3) Family outreach that is culturally sensitive and provides information and training to parents on how to support their child's learning both at home and in school.

(4) Counseling services (which may include individual, group, or family counseling).

(5) Career awareness and preparation services (such as career guidance, vocational training, enhancement of employability skills, job internship, and job placement services).

(6) Social support services (such as child care, health services, transportation, and legal aid).

(7) Linkages among feeder elementary, middle schools, and the high school; involvement of business and community groups; and coordination of project activities with those supported by other Federal, State, and local programs.

A proposed project for either priority (a)—"restructuring"—or priority (b)—"targeted programs for at-risk youth"—must include all of the components identified for that approach. An applicant may, however, propose to give more or less emphasis to individual components. Projects may phase in required components over the first year of the grant, but all components must be fully implemented by the second year. It is not necessary that all of the identified components be supported with funds under this program. Portions of the proposed project may be supported with other Federal, State, or local funds.

The remaining funds—approximately 20 percent—will be reserved for field-initiated approaches that otherwise meet the requirements of the authorizing statute.

*Competitive Preference:* In accordance with 20 U.S.C. § 3245(d) and 34 CFR 75.105(c)(2), the Secretary will give competitive preference to applications that:

(a) Emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; or

(b) Contain provisions for significant parental involvement in the design and conduct of the program for which assistance is sought.

Under 34 CFR 75.105(c)(2)(ii) an application that meets these competitive priorities is selected by the Secretary

over applications of comparable merit that do not meet the priorities.

*Invitational Priority:* In accordance with 34 CFR 75.105(c)(1), the Secretary also invites applicants to propose projects that include activities designed to address the persistently high dropout rate among Hispanic Americans.

An application that meets this invitational priority does not receive competitive or absolute preference over other applications that do not meet this invitational priority.

*Federal Evaluation:* The Department of Education intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract will be competitively awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with other Federal, State, or local funds. All grantees will be required to cooperate with the national evaluation, which will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on: (1) The students being served, including socioeconomic background and attendance, achievement, and retention data; (2) the services provided and cost of providing those services; (3) extent of involvement of parents, business, and community groups and the social and economic environment in which the project operates; (4) coordination with other agencies; (5) staff training and qualifications; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. Methodology for the outcome evaluation will vary depending on the type of project. Projects that target services for at-risk youth, including field-initiated projects, will be evaluated through the establishment of control groups using random assignment or the selection of matched comparison groups. Projects that restructure, including field-initiated projects, will use a trend analysis methodology, such as interrupted time-series with comparison groups that will require assembly of data from administrative records for at least five years prior to the project as well as during the project.

The data will be collected from both the project schools and either all other schools in the district (for small districts) or a set of similar schools (in large districts). The contractor will start

working with projects in preparation for the outcome evaluation as soon as grants are awarded. Implementation of the outcome evaluation will take place in the second year of the program after selection of projects and the establishment of appropriate control/comparison groups.

For the outcome evaluation, the Department will select a number of sites for in-depth study. For those sites, the national evaluator will, as appropriate, establish control/comparison groups or arrange for collection of prior and current administrative records. The National evaluator will also survey student attitudes and teacher attitudes, perceptions, and knowledge in those sites.

Each remaining site will itself contract with a local evaluator or use district evaluation staff to conduct an outcome evaluation. These evaluation plans will be implemented only upon review and approval by the Department of Education. The local evaluators will establish control or comparison groups or collect prior and current administrative records. Each site will provide outcome data and summaries to the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractor to local project directors and evaluators.

In the application, each applicant must submit an assurance that it will collaborate with the national evaluation in collection of descriptive and outcome data. An applicant proposing a field-initiated program or a program targeted on at-risk students must also indicate its willingness to participate in a random assignment evaluation model, as described below. An applicant proposing to restructure a cluster of schools must indicate its willingness to cooperate with a national or local evaluator in assembly of administrative records on student characteristics such as attendance, retention, and achievement and on school characteristics such as school lunch rates. The records will be needed from project schools and either all other schools in the district if the district is small or a comparable set of schools if the district is large.

#### Random assignment

The evaluation of targeted projects for at-risk youth, including field-initiated projects, will involve the establishment of control groups through random assignment or the selection of matched comparison groups. The appropriate method of selecting a control or matched comparison group for the evaluation of targeted projects for at-risk youth will

be determined by the Department based on program characteristics.

Random assignment of potentially eligible participants to the program and the control group is the preferred method of evaluation for projects in which it is appropriate and feasible. Random assignment will not affect the total number of students served by the project, only the method by which eligible applicants are accepted into the program. In particular, it will not be appropriate in sites where all eligible students can be served. Random assignment will take place after potentially eligible participants have been identified and recruited. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. If the Department of Education decides that random assignment is not appropriate for a project, matched comparison groups will be selected by identifying nonparticipants who have characteristics that are similar to those of the program participants.

The independent evaluator under contract to the Department will work closely with grantees in gaining their cooperation, choosing the control or comparison groups, and providing assistance in conducting the activities associated with the evaluation.

#### Evaluation by the Grantee

The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. As part of its application, an applicant must submit a self-evaluation plan that will complement the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local information needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

#### Selection Criteria

(a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the

project will meet the purpose of the School Dropout Demonstration Assistance Act, including consideration of—

(i) The objectives of the project; and  
(ii) How the objectives of the project further the purposes of the School Dropout Demonstration Assistance Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the School Dropout Demonstration Assistance Act, including consideration of—

(i) The needs addressed by the project;  
(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

#### Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any Single Point of Contact, see the list published in the *Federal Register* on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review,

State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.201 U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

**PLEASE NOTE THAT THIS ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.**

#### Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202-4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.201) Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732-2495.

(2) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

#### Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

*Part II:* Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

*Part III:* Application Narrative.

Additional Materials:  
Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009, Rev. 12/88) and instructions. (NOTE: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:**  
John R. Fiegel, School Dropout  
Demonstration Assistance Program, U.S.  
Department of Education, 400 Maryland  
Avenue, SW., room 2049, Washington,  
DC 20202-6439, telephone number: (202)

401-1342. Deaf and hearing impaired  
individuals may call the Federal Dual  
Party Relay Service at 1-800-877-8339  
(in the Washington, DC area code,  
telephone 708-9300) between 8 a.m. and  
7 p.m. Eastern time.

Authority: 20 U.S.C. 3241.  
Dated: January 22, 1991.  
**John T. MacDonald,**  
*Assistant Secretary for Elementary and  
Secondary Education.*  
BILLING CODE 4000-01-M

OMB Approval No. 0345-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

|   |             |   |  |                              |
|---|-------------|---|--|------------------------------|
| <b>1. TYPE OF SUBMISSION:</b><br><i>Application</i><br><input type="checkbox"/> Construction<br><input checked="" type="checkbox"/> Non-Construction  |             | <b>2. DATE SUBMITTED</b>  |  | Applicant Identifier         |
|   |             | <b>3. DATE RECEIVED BY STATE</b>  |  | State Application Identifier |
| <b>4. DATE RECEIVED BY FEDERAL AGENCY</b>   |             | Federal Identifier  |  |                              |
| <b>5. APPLICANT INFORMATION</b>   |             |   |  |                              |
| Legal Name:   |             |   | Organizational Unit:   |                              |
| Address (give city, county, state, and zip code):   |             |   | Name and telephone number of the person to be contacted on matters involving this application (give area code)   |                              |
| <b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b><br>[ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]  |             |   | <b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b>   |                              |
| <b>8. TYPE OF APPLICATION:</b><br><input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision<br>If Revision, enter appropriate letter(s) in box(es):<br>A. Increase Award    B. Decrease Award    C. Increase Duration<br>D. Decrease Duration    Other (specify): |             |   | A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School Dist.<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify): |                              |
| <b>9. NAME OF FEDERAL AGENCY:</b><br>U.S. Department of Education   |             |   | <b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>   |                              |
| <b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b><br>TITLE: School Dropout Demonstration Assistance Program   |             |   | 8 4 2 0 1  |                              |
| <b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>  |             |   |  |                              |
| <b>13. PROPOSED PROJECT:</b>  |             | <b>14. CONGRESSIONAL DISTRICTS OF:</b>  |  |                              |
| Start Date  | Ending Date | a. Applicant  |  | b. Project                   |
| <b>15. ESTIMATED FUNDING:</b>   |             | <b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>   |  |                              |
| a. Federal  | \$ .00      | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:  |  |                              |
| b. Applicant  | \$ .00      | DATE _____  |  |                              |
| c. State  | \$ .00      | b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372  |  |                              |
| d. Local  | \$ .00      | <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW   |  |                              |
| e. Other  | \$ .00      | <b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>   |  |                              |
| f. Program Income   | \$ .00      | <input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No  |  |                              |
| g. TOTAL  | \$ .00      | <b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b> |  |                              |
| a. Typed Name of Authorized Representative  |             | b. Title  |  | c. Telephone number          |
| d. Signature of Authorized Representative   |             |   | e. Date Signed   |                              |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

**BUDGET INFORMATION — Non-Construction Programs**

OMB Approval No. 0348-0044

**SECTION A — BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds |                 | New or Revised Budget |                 | Total (g) |
|--|---|-----------------------------|-----------------|-----------------------|-----------------|-----------|
|  |   | Federal (c)                 | Non-Federal (d) | Federal (e)           | Non-Federal (f) |           |
| 1.                                     |   | \$                          | \$              | \$                    | \$              | \$        |
| 2.                                     |   |                             |                 |                       |                 |           |
| 3.                                     |   |                             |                 |                       |                 |           |
| 4.                                     |   |                             |                 |                       |                 |           |
| 5. TOTALS                              |   | \$                          | \$              | \$                    | \$              | \$        |

**SECTION B — BUDGET CATEGORIES**

| Object Class Categories                  | GRANT PROGRAM, FUNCTION OR ACTIVITY |     |     |     |     | Total (5) |
|--|-------------------------------------|-----|-----|-----|-----|-----------|
|  | (1)                                 | (2) | (3) | (4) | (5) |           |
| a. Personnel                             | \$                                  | \$  | \$  | \$  | \$  | \$        |
| b. Fringe Benefits                       |                                     |     |     |     |     |           |
| c. Travel                                |                                     |     |     |     |     |           |
| d. Equipment                             |                                     |     |     |     |     |           |
| e. Supplies                              |                                     |     |     |     |     |           |
| f. Contractual                           |                                     |     |     |     |     |           |
| g. Construction                          |                                     |     |     |     |     |           |
| h. Other                                 |                                     |     |     |     |     |           |
| i. Total Direct Charges (sum of 6a - 6h) |                                     |     |     |     |     |           |
| j. Indirect Charges                      |                                     |     |     |     |     |           |
| k. TOTALS (sum of 6i and 6j)             | \$                                  | \$  | \$  | \$  | \$  | \$        |

|                   |    |    |    |    |    |    |
|-------------------|----|----|----|----|----|----|
| 7. Program Income | \$ | \$ | \$ | \$ | \$ | \$ |
|-------------------|----|----|----|----|----|----|

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| SECTION C - NON-FEDERAL RESOURCES   |                               |             |                   |             |             |
|---|-------------------------------|-------------|-------------------|-------------|-------------|
| (e) Grant Program   | (b) Applicant                 | (c) State   | (d) Other Sources | (e) TOTALS  |             |
| 8.  | \$                            | \$          | \$                | \$          |             |
| 9.  |                               |             |                   |             |             |
| 10.   |                               |             |                   |             |             |
| 11.   |                               |             |                   |             |             |
| 12. TOTALS (sum of lines 8 and 11)  | \$                            | \$          | \$                | \$          |             |
| SECTION D - FORECASTED CASH NEEDS   |                               |             |                   |             |             |
|   | Total for 1st Year            | 1st Quarter | 2nd Quarter       | 3rd Quarter | 4th Quarter |
|   | \$                            | \$          | \$                | \$          | \$          |
| 13. Federal   |                               |             |                   |             |             |
| 14. NonFederal  |                               |             |                   |             |             |
| 15. TOTAL (sum of lines 13 and 14)  | \$                            | \$          | \$                | \$          | \$          |
| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT |                               |             |                   |             |             |
| (e) Grant Program   | FUTURE FUNDING PERIODS (Year) |             |                   |             |             |
|   | (b) First                     | (c) Second  | (d) Third         | (e) Fourth  |             |
| 16.   | \$                            | \$          | \$                | \$          |             |
| 17.   |                               |             |                   |             |             |
| 18.   |                               |             |                   |             |             |
| 19.   |                               |             |                   |             |             |
| 20. TOTALS (sum of lines 16 -19)  | \$                            | \$          | \$                | \$          |             |
| SECTION F - OTHER BUDGET INFORMATION<br>(Attach additional Sheets if Necessary) |                               |             |                   |             |             |
| 21. Direct Charges:   |                               |             |                   |             |             |
| 22. Indirect Charges:   |                               |             |                   |             |             |
| 23. Remarks   |                               |             |                   |             |             |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary  
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** — Show the amount of indirect cost.

**Line 6k** — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**INSTRUCTIONS FOR THE SF-424A (continued)**

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

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**Instructions for Part III—Application Narrative**

Before preparing the Application Narrative, applicants should read carefully the programmatic requirements, the information regarding priorities, and the selection criteria for the School Dropout Demonstration Assistance Act. The information is included in this application notice. In addition, applicants should read the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 Administration of Grants and Part 75 Direct Grant Programs.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract—that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice; and
3. Supply necessary data on the data sheets provided. Applicants should record the appropriate priorities, enrollment data, number and percent of dropouts and potential dropouts. Applications should include the definition of a dropout that they use in collecting data.

Please limit the Application Narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation may be attached to the program narrative and is not counted as part of the 30 pages of narrative. (Approved by the Office of Management and Budget under control number 1810-0535)

**School Dropout Demonstration Assistance Program—Absolute Priorities**

Indicate whether your application meets the statutory priority by marking the following box:

- Statutory priority.* Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA, and reflects very high numbers or very high percentages of school dropouts in the schools of the applicant.

!!!IMPORTANT NOTE: An application that fails to meet the statutory priority will not be considered!!!

In addition to the statutory priority, indicate which priorities your application addresses by marking the appropriate boxes:

- Restructuring and reform.* Application meets all of the requirements of this priority.
- Targeted programs for at-risk youth.* Application meets all of the requirements of this priority.
- Field-initiated projects.* Application does not meet the requirements of either the restructuring priority or the targeted priority, but proposes a project which otherwise meets the requirements of the authorizing statute.

If an applicant does not mark either the restructuring and reform box or the targeted programs for at risk youth box, the application will be considered as a field-initiated project.

**Special Considerations/Invitational Priority**

Identify any special consideration(s) or invitational priority under which you are submitting an application by marking the appropriate box(es).

- Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.
- Application contains provisions for significant parental involvement in the design and conduct of the project.
- An application contains provisions to address the persistently high dropout rate among Hispanic Americans.

**School Dropout Demonstration Assistance Program—Data Sheet**

Please mark the appropriate box.

- Total enrollment of 100,000 or more elementary and secondary school students.
- Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.
- Total enrollment of less than 20,000 elementary and secondary school students. Check here if enrollment is less than 2,000 \_\_\_\_\_

\* Please check the box below if the applicant is a community-based organization.

\*\* Please check below if the applicant is an educational partnership. Then list the members of the partnership and circle the type of organization.

- (A) \_\_\_\_\_  
local education agency
- (B) \_\_\_\_\_  
business concern or business organization, or, if not available, a community-based organization, nonprofit private organization, institution of higher education, State educational agency, State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

\* Evidence of the applicant's nonprofit status should be attached.

\*\* Evidence of the applicant's nonprofit status should be attached if the educational partnership includes a nonprofit private organization.

**School Dropout Demonstration Assistance Program—Data Sheet**

Please provide the information set forth below on the number and percentage of children who were enrolled in the schools of the applicant for the five academic years prior to the date of this application who have not completed their elementary and secondary education and who are classified as dropout students.

| School year   | # dropout students | Total enrollment | % dropouts |
|---------------|--------------------|------------------|------------|
| 1989-90 ..... |                    |                  |            |
| 1988-89 ..... |                    |                  |            |
| 1987-88 ..... |                    |                  |            |
| 1986-87 ..... |                    |                  |            |
| 1985-86 ..... |                    |                  |            |

Applicant's definition of a dropout:

**Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0535, Washington, DC 20503.

(Information collection approved under OMB control number 1810-0535. Expiration date: 12/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

|   |       |                |
|---|-------|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |                |
| APPLICANT ORGANIZATION                      |       | DATE SUBMITTED |

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

#### A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

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[FR Doc. 91-2503 Filed 2-1-91; 8:45 am]

BILLING CODE 4000-01-C



# Federal Register

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Monday  
February 4, 1991

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## Part VI

### Department of Education

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**School Dropout Demonstration  
Assistance Program; Notice**

## DEPARTMENT OF EDUCATION

### School Dropout Demonstration Assistance Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final priorities for fiscal year (FY) 1991.

**SUMMARY:** The Secretary of Education establishes absolute priorities for the grant competition to be held in FY 1991 for the School Dropout Demonstration Assistance Program authorized by part A of title VI of the Elementary and Secondary Education Act of 1965, as amended. Under the priorities, approximately 80 percent of the appropriated funds will be reserved for two types of broad approaches—projects that focus on (1) restructuring and reform within school clusters or (2) targeted programs for at-risk youth. The remaining funds will be reserved for field-initiated approaches that otherwise meet the requirements of the authorizing statute. All of the projects will be coordinated with a Federal evaluation of the program, and there will be an in-depth evaluation of selected projects.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** The School Dropout Demonstration Assistance Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202-6439, telephone number: (202) 401-1342, or John R. Fiegel (202) 401-1342. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**Note:** For information relating to the application requirements and procedures under this program see the notice inviting new applications for the School Dropout Demonstration Assistance Program published in this issue of the *Federal Register*.

#### SUPPLEMENTARY INFORMATION:

##### Background

The purpose of the School Dropout Demonstration Assistance Program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate effective programs.

On October 9, 1990, the Secretary published a notice of proposed priorities (NPP) for the School Dropout Demonstration Assistance Program in the *Federal Register* (55 FR 41127). The NPP described absolute priorities for the grant competition to be held in FY 1991 under this program. Under the proposed priorities, appropriated funds would be reserved for projects that focus on either (1) restructuring and reform within school clusters, or (2) targeted programs for at-risk youth. The NPP also described the Federal evaluation of the program, including an in-depth evaluation of selected projects.

As a result of public comment, the Secretary has reserved part of the appropriated funds for field-initiated projects so that promising approaches that might not be eligible under the two priority areas may be demonstrated. Reserving a portion of the appropriated funds for field-initiated projects should also encourage further the participation of community-based organizations. In addition, the Secretary has amended the priorities to clarify that applicants may choose to phase in required components during the first year of a project, but all components must be implemented by the start of the second year. Finally, in districts that offer open enrollment, schoolwide restructuring must occur at a high school and its dominant feeder elementary and middle schools.

#### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPP, 71 parties submitted comments on the proposed priorities. An analysis of the comments and of the changes in the priorities since publication of the NPP is published as an appendix to this notice.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

#### Absolute Priorities

With approximately 80 percent of the appropriated funds, the Secretary will give absolute preference to applications that focus on either one of the following approaches:

##### (a) Restructuring and Reform

Under this priority, applicants may apply for grants to restructure the education program for a school cluster—that is, a high school and its feeder elementary and middle schools. In school districts that offer open enrollment, the schoolwide restructuring must occur at a high school and its dominant feeder elementary and middle schools. Restructuring will require

schoolwide change, and a proposed project must include at least the following components at each school level:

(1) Autonomy for both principals and teachers to determine curriculum and instruction strategies. (This may include such activities as the following: Setting school performance goals, structuring schedules and patterns for daily instruction, initiating new programs and activities, or evaluating achievement.)

(2) Interesting and challenging curricula that move students along as fast as their capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(3) A school climate where students are made to feel that they are an important and integral part of the school and interaction between students and adults is encouraged. (Implementation strategies may include, but are not limited to, counseling, mentoring, team teaching, dividing schools into smaller entities, and recognition of students' cultural heritage.)

(4) Systematic monitoring of attendance and follow-up of absences with students and parents.

(5) Alternatives to standard retention practices (such as promotion with special assistance).

(6) Coordination of services to meet at-risk students' multiple needs (through such approaches as case management).

(7) Policies and procedures to ensure communication among schools in the project and to facilitate a student's transition from elementary to middle to high schools.

(8) Parent and community involvement (using such means as parent advisory councils, volunteer groups, or school-based management teams).

(9) Staff training to provide for effective operation of the program.

##### (b) Targeted Programs for At-Risk Youth

Under this priority, applicants may apply for grants to support projects that involve comprehensive targeted services for at-risk youth. These projects may include, but are not limited to, such approaches as special programs for at-risk youth in regular schools, a "school within a school," alternative schools that serve only at-risk youth, or other similar arrangements. In order to qualify for funding under this priority, a proposed project must include at least the following components:

(1) Accelerated learning strategies for improving academic performance and interesting and challenging curricula that move students along as fast as their capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(2) Systematic monitoring of attendance and follow-up of absences with parents.

(3) Family outreach that is culturally sensitive and provides information and training to parents on how to support their child's learning both at home and in school.

(4) Counseling services (which may include individual, group, family counseling).

(5) Career awareness and preparation services (such as career guidance, vocational training, enhancement of employability skills, job internships, and job placement services).

(6) Social support services (such as child care, health services, transportation, and legal aid).

(7) Linkages among feeder elementary, middle schools, and the high school; involvement of business and community groups; and coordination of project activities with those supported by other Federal, State, and local programs.

A proposed project for either priority (a)—"restructuring"—or priority (b)—"targeted programs for at-risk youth"—must include all of the components identified for that approach. An applicant may, however, propose to give more or less emphasis to individual components. Projects may phase in required components over the first year of the grant, but all components must be fully implemented by the second year. It is not necessary that all of the identified components be supported with funds under this program. Portions of the proposed project may be supported with other Federal, State, or local funds.

#### Federal Evaluation

The Department of Education intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract will be competitively awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with our Federal, State, or local funds. All grantees will be required to cooperate with the national evaluation, which will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on: (1) The students

being served, including socioeconomic background and attendance, achievement, and retention data; (2) the services provided and cost of providing those services; (3) extent of involvement of parents, business, and community groups and the social and economic environment in which the project operates; (4) coordination with other agencies; (5) staff training and qualification; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. Methodology for the outcome evaluation will vary depending on the type of project. Projects that target services on at-risk youth, including field-initiated projects, will be evaluated through the establishment of control groups using random assignment or the selection of matched comparison groups. Projects that restructure, including field-initiated projects, will use a trend analysis methodology, such as interrupted time-series with comparison groups that will require assembly of data from administrative records for at least five years prior to the project as well as during the project. The data will be collected from both the project schools and either all other schools in the district (for small districts) or a set of similar schools (in large districts). The contractor will start working with projects in preparation for the outcome evaluation as soon as grants are awarded. Implementation of the outcome evaluation will take place in the second year of the program after selection of projects and the establishment of appropriate control/comparison groups.

For the outcome evaluation, the Department will select a number of sites for in-depth study. For those sites, the national evaluator will, as appropriate, establish control/comparison groups or arrange for collection of prior and current administrative records. The National evaluator will also survey student attitudes and teacher attitudes, perceptions, and knowledge in those sites.

Each remaining site will itself contract with a local evaluator or use district evaluation staff to conduct an outcome evaluation. These evaluation plans will be implemented only upon review and approval by the Department of Education. The local evaluators will establish control or comparison groups or collect prior and current administrative records. Each site will provide outcome data and summaries to

the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractor to local project directors and evaluators.

In the application, each applicant must submit an assurance that it will collaborate with the national evaluation in collection of descriptive and outcome data. An applicant proposing a field-initiated program or a program targeted on at-risk students must also indicate its willingness to participate in a random assignment evaluation model, as described below. An applicant proposing to restructure a cluster of schools must indicate its willingness to cooperate with a national or local evaluator in assembly of administrative records on student characteristics such as attendance, retention, and achievement and on school characteristics such as school lunch rates. The records will be needed from project schools and either all other schools in the district if the district is small or a comparable set of schools if the district is large.

#### Random assignment

The evaluation of targeted projects for at-risk youth, including field-initiated projects, will involve the establishment of control groups through random assignment or the selection of matched comparison groups. The appropriate method of selecting a control or matched comparison group for the evaluation of targeted projects for at-risk youth will be determined by the Department based on program characteristics.

Random assignment of potentially eligible participants to the program and the control group is the preferred method of evaluation for projects in which it is appropriate and feasible. Random assignment will not affect the total number of students served by the project, only the method by which eligible applicants are accepted into the program. In particular, it will not be appropriate in sites where all eligible students can be served. Random assignment will take place after potentially eligible participants have been identified and recruited. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. If the Department of Education decides that random assignment is not appropriate for a project, matched comparison groups will be selected by identifying nonparticipants who have characteristics that are similar to those of the program participants.

The independent evaluator under contract to the Department will work closely with grantees in gaining their cooperation, choosing the control or comparison groups, and providing assistance in conducting the activities associated with the evaluation.

#### Evaluation by the Grantee

The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. An applicant must submit an evaluation plan to address these requirements as part of its application, that will complement the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local information needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Authority: 20 U.S.C. 3241.

Dated: January 14, 1991.

Ted Sanders,

Acting Secretary of Education.

#### Appendix—Analysis of Comments and Changes

##### General Comments

*Comments:* Several commenters expressed support for the proposed comprehensive dropout prevention priorities. One stated that supporting more of what has been done in the past will not work and that comprehensive approaches in both targeted and clustered programs are essential if we are to make any headway in addressing the problem. On the other hand several commenters contended that the proposed priorities would be inconsistent with the intent of the authorizing statute and recommended that the Secretary allow field-initiated approaches. In addition, some of the commenters believed that a comprehensive national model would not be workable and that support for local programs and projects is what is needed because of the

numerous factors that may affect whether a student drops out of school.

*Discussion:* Research strongly suggests the need for a comprehensive approach to dropout prevention, whether the approach is targeted to at-risk youth or focuses on school system change through restructuring and reform. National-level evaluative evidence on what works in comprehensive programs will provide important and much needed information to States and local communities in designing programs to increase the number of students who complete their elementary and secondary education. However, the Secretary recognizes the need to explore approaches that might not fit under one of the priorities, but would otherwise provide additional important information to State and local communities.

*Changes:* The Secretary will reserve approximately 80 percent of the appropriated funds for projects that focus on either restructuring and reform or targeted programs for at-risk youth. The remaining funds will be reserved to support field-initiated projects that meet the statutory requirements and are of sufficient size and scope to serve as national demonstrations.

*Comment:* One commenter expressed concern that a requirement to address all of the components under a priority at the beginning of a project would be unfair and suggested that a project be allowed to phase in components over a period of time.

*Discussion:* Nothing under these priorities would prevent a project from phasing in components. However, language has been added to clarify this point.

*Changes:* The provision has been changed by adding the sentence "Projects may phase in required components over the first year of the grant, but all components must be fully implemented by the second year."

##### Restructuring and Reform Within School Clusters

*Comments:* Several commenters expressed strong support for the priority requiring a comprehensive restructuring program. One commenter stated that this priority is essential if urban public education is to contribute effectively to reducing the dropout rate. However, one commenter expressed a concern that this priority could discriminate against urban school districts because many no longer have the traditional school cluster of a high school and feeder elementary and middle schools serving a defined attendance area. Instead, the commenter said, many urban districts offer open enrollment, allowing a student to attend any school in the district. Another commenter stated that it would be next to impossible for a school district to attempt restructuring while dealing with the difficult task of dropout prevention and reclamation. The commenters recommended that this priority be dropped.

*Discussion:* In school districts where the dropout problem is so severe that programs focused on individual youths are not enough, where "fixing the student" cannot be accomplished without "fixing the school," system-wide restructuring and reform is necessary. The Secretary agrees that those school districts that offer open enrollment should not be precluded from competing

under this priority because they no longer have the traditional school clusters. The language under this priority has been changed to accommodate the commenter's concern.

*Changes:* In school districts that offer open enrollment the schoolwide restructuring must occur at a high school and its dominant feeder elementary and middle schools.

*Comments:* One commenter expressed concern that two-year technical colleges would not be able to compete under this priority since the school clusters concept applies only to K-12 systems. This commenter recommended a K-14 span that would allow partnership activities between two-year technical colleges and K-12 districts.

*Discussion:* There is nothing in this priority that would preclude a two-year technical college from entering into a partnership with a K-12 district. However, the purpose of the program is to reduce the number of students who do not complete their elementary and secondary education, and that is where the emphasis on programs must remain.

*Changes:* None.

*Comments:* One commenter recommended that this priority call for the identification and selection of interventions and instructional strategies prior to establishing autonomy for principals and teachers. This commenter also suggested that projects should use principals and teachers experienced in alternative education in implementing restructuring projects.

*Discussion:* Nothing under this priority would prevent projects from identifying and selecting instructional strategies and interventions prior to establishing autonomy for principals and teachers, or from using personnel with experience in alternative education. These matters, however, are local decisions.

*Changes:* None.

##### Targeted Programs for At-Risk Youth

*Comments:* Several commenters expressed concern that community-based organizations would not be able to compete under this priority because some of the required components are normally school-based and are not undertaken by community-based organizations. These commenters suggested that a "menu" approach be used so that community-based organizations could choose some of the components but not be required to comply with all of them. One commenter expressed concern that components should be determined locally and recommended that "must" be changed to "may" for this to be accomplished.

*Discussion:* Under the authorizing statute, nearly 50 percent of the appropriated funds may be awarded to educational partnerships. Community-based organizations are encouraged to enter into partnerships with local educational agencies and other eligible entities to compete for those funds. In addition, 5 percent of the appropriated funds are reserved by statute solely for projects that are operated by community-based organizations. These organizations that are not able to address all of the components

under this priority may choose to compete for field-initiated projects.

*Changes:* No change is made to the priority. However, approximately 20 percent of the appropriated funds are reserved for field-initiated approaches to ensure that community-based organizations are able to compete.

#### Federal Evaluation

*Comments:* Two commenters expressed support for the proposed rigorous evaluation component, saying that it will contribute to a better understanding of what works in dropout prevention. Another commenter supported locally developed evaluation components designed to validate strategies effective in dropout prevention. One commenter expressed preference for the evaluation plan announced in the *Federal Register* on May 10, 1988, stating that a control group comparison and overly structured evaluation would not get at the question of intended outcomes as much as will other evaluative approaches.

Two commenters expressed concern with the implementation of a random assignment evaluation methodology, citing operational and philosophical difficulties with providing services to some members of a target population and not providing services to other members of that target population, purely for evaluation purposes. Their concern was that control group students identified as being in need would not have available to them the same services that other students

will be receiving. Another commenter recommended that random assignment occur before recruitment of students, rather than after they have been recruited.

One commenter expressed concern that the evaluation would provide little or no information on the level of resources and costs being invested in the intervention being evaluated to enable an assessment of cost effectiveness. Another commenter suggested that the evaluation place more emphasis on the social ecology in which the schools operate, particularly in the analysis of time-series data.

*Discussion:* Random assignment is the most rigorous method of evaluating program effects in that it controls for motivation to participate in the program. It is particularly appropriate for evaluating dropout prevention programs because the high dropout rate is a serious problem for which effective solutions are being sought.

Because the statute requires that priority be given to applications from local educational agencies that have a very high number of percentage of school dropouts, it is unlikely that a grantee will receive sufficient funds to serve all eligible students. Random assignment of potentially eligible participants to the program and control group will not affect the total number of students served by the project, only the method by which eligible applicants are accepted into the program. The primary reason for random assignment is to assess the relative effectiveness of the program on its participants. This can be best

achieved by implementing random assignment at the point of selection into the program.

Random assignment will not be appropriate in sites where all eligible students can be served. Slots can be set aside for eligible students that program administrators consider to be particularly in need of the program services; those participants would not be part of the evaluation. Students in the control group will receive no services from the program, but will be free to receive other available services and can be provided with a list of other services available in the area.

In addition to the requirements for self-evaluation in 34 CFR 75.590, applicants may propose additional local evaluation activities to meet local information needs and complement the activities conducted through the Federal evaluation.

The Federal evaluation will include information on the level of resources and costs being invested in the intervention being evaluated to enable an assessment of cost effectiveness. It will also document the social and economic environment in which the programs operate.

*Changes:* The description of the Federal evaluation has been revised to include cost effectiveness and the social and economic environment of the projects.

[FR Doc. 91-2502 Filed 2-01-91; 8:45 am]

BILLING CODE 4000-01-M



# Registered Federal Trade

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Monday  
February 4 1991

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## Part VII

### Department of Education

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Even Start Program; Notice Inviting  
Applications for New Awards for Fiscal  
Year (FY) 1991

## DEPARTMENT OF EDUCATION

[CFR No.: 84.213]

**Even Start Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991**

**NOTE TO APPLICANTS:** This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

**PURPOSE OF PROGRAM:** To provide financial assistance to eligible local educational agencies (LEAs) for the Federal share of the cost of providing family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

**ELIGIBLE APPLICANTS:** The following are eligible for new awards under this competition: LEAs (under the definition in section 1471(12) of the Elementary and Secondary Education Act of 1965) that have collaborated with appropriate nonprofit organizations.

**DEADLINE FOR TRANSMITTAL OF APPLICATIONS:** March 29, 1991.

**DEADLINE FOR INTERGOVERNMENTAL REVIEW:** May 28, 1991.

**AVAILABLE FUNDS:** Approximately \$21,160,000.

**ESTIMATED RANGE OF AWARDS:** \$50,000 to \$250,000.

**ESTIMATED AVERAGE SIZE OF AWARDS:** \$193,000.

**ESTIMATED NUMBER OF AWARDS:** 110.

**Note:** The Department is not bound by any estimates in this notice.

**PROJECT PERIOD:** Up to 48 months.

**APPLICABLE REGULATIONS:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free

Workplace (Grants)), part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR part 212.

**DESCRIPTION OF PROGRAM:** Recognizing that some parents lack the skills needed to help their children learn, the Even Start program provides simultaneous educational services to disadvantaged children and their parents. Eligible applicants are LEAs that have collaborated with appropriate nonprofit organizations. Eligible participants are children ages 1 through 7 who reside in an elementary school attendance area designated for participation in the Chapter 1 basic program and their parents who are eligible for participation in an adult education program under the Adult Education Act.

The Department awards grants to LEAs for a period not to exceed four (4) years. For continuation of funding beyond year one, grantees are required to show satisfactory progress toward meeting project objectives. The Federal share of the total cost of each project is not more than 90 percent in the first year, decreasing by 10 percent in each subsequent year to 60 percent in the fourth and final year. In its application, an LEA must demonstrate its ability to provide its share of the cost.

The Department is conducting an evaluation of projects under Even Start, and successful projects are considered for dissemination through the National Diffusion Network. Grantees shall cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the Department's national evaluation and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of Even Start to be conducted by an independent contractor. Grantees may be required to amend their plans to conform with the national evaluation. However, the review panel's examination of the applicant's potential as a model, under § 212.21(e) of the regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Each applicant should budget for evaluation activities as follows: a project with an estimated cost of up to \$120,000 should designate \$5,000 for this purpose; a project with an estimated cost of over \$120,000 should designate \$10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. LEAs must also budget for

the cost of travel to Washington, DC, and two nights' lodging for the project director and the project evaluator, for their participation in the annual evaluation meeting.

The following instructions and examples outline the procedure an LEA should use to compute the percentage of eligible children and parents to be served by their district under the Even Start program (to be used in Part IV-B of this application):

(1) Determine the number of participating Chapter 1 elementary attendance areas within the entire district.

**Example:** District A has 10 participating Chapter 1 elementary attendance areas.

(2) Determine the number of parents in all attendance areas identified above who have children ages 1 through 7 and who are eligible for participation in an adult education program under the Adult Education Act.

**Example:** Within the 10 attendance areas, the LEA determines that 1,000 parents have children ages 1 through 7 and qualify for services under the Adult Education Act.

(3) Count the number of children ages 1 through 7 of the parents identified in (2) above.

**Example:** These parents have 1,500 children ages 1 through 7.

(4) Add the result of (2) and the result of (3) above to determine the total number of eligible Even Start parents and children.

**Example:** District A has 2,500 eligible parents and children.

(5) Subtract the total number of individual parents and children receiving "similar family-centered services" (see definition in § 212.21(b)(3) of the program regulations).

**Example:** The LEA and/or the community in which District A is located currently provides family-centered services to 75 of the children and 50 of the parents who are eligible to receive Even Start services. This group is subtracted from the total number of eligible participants identified in (4) above, thereby reducing the total to 2,375.

(6) Identify the number of parents and children to be served.

**Example:** District A has determined that it will implement Even Start services in two of its Chapter 1 elementary attendance areas (based on greatest need). Two hundred eligible children and 150 eligible parents reside in these two attendance areas.

(7) Divide the number identified in (6) above by the number resulting from (5). This is the percentage of eligible parents and children targeted to receive Even Start services.

Example: 350 divided by 2.375 equals .1474 or 14.74 percent. District A plans to serve 15 percent of the eligible Even Start population.

Applicants are permitted to estimate the number of eligible parents and children provided that the information is based upon the most reliable and current data the district has available. Districts are expected to identify and be able to verify data sources.

Applicants must be complete in all respects to be reviewed and considered for funding.

#### Funding of Current Projects

In accordance with the requirements of EDGAR, the Secretary plans to fund acceptable continuation requests of current (FY 1989 and FY 1990) grantees before funding new projects. It is estimated that the number of continuation grants will approximate the number of current grants. Section 212.22(d) of the regulations provides that to the extent that acceptable applications are received from the

various States, the Secretary does not give grants to LEAs in one State in amounts that, in total, exceed the amount that the State would be allocated under section 1053(b) of the Act if the appropriation for the Even Start program equals \$50 million.

The following three-column table shows the estimated amount of funds available to States if there were a \$50 million appropriation; the estimated amount needed for funding continuation grants in each State; and the estimated amount of funds that currently remains available within each State. However, if there are no acceptable applications for new grants from LEAs in a State that has funds available in Column III, it is possible that the amount designated for that State would be distributed to applicants from other States, even though the total amounts awarded in those States exceed the estimated amounts available as indicated in Column I.

Example: State A has an estimated allocation of \$250,000 (Column I) and two continuation grants totaling \$250,000 (Column II). Thus, there are no funds remaining available in Column III. An LEA in State A submitted an acceptable proposal that is the next highest ranked application as a result of the peer review process. State B has an estimated allocation of \$500,000 (Column I), and two continuation grants totaling approximately \$300,000 (Column II). Thus the amount of remaining available funds for State B is approximately \$200,000 (Column III). If there are no acceptable applications from LEAs in State B, the \$200,000 could be awarded to the applicant in State A, even though this amount would push State A's total beyond its estimated allocation amount (Column I).

LEAs planning to apply for Even Start funds should refer to the following table for guidance. However, even though a State has no funds available in Column III, it is possible for applicants from such States to receive funds available under the conditions described above.

|                      | I  | II                                   | III   |
|----------------------|--|--------------------------------------|---|
|                      | Estimated amount available at \$50 million appropriation | Estimated amount continuation grants | Estimated amount remaining available for new projects |
| Alabama              | \$973,578  | \$556,218                            | \$417,360   |
| Alaska               | 250,000  | 0                                    | 250,000   |
| Arizona              | 504,698  | 338,322                              | 165,876   |
| Arkansas             | 543,403  | 280,412                              | 262,991   |
| California           | 4,498,811  | 1,206,729                            | 3,292,082   |
| Colorado             | 422,262  | 425,750                              | 0   |
| Connecticut          | 497,796  | 486,547                              | 11,249  |
| Delaware             | 250,000  | 235,805                              | 14,195  |
| District of Columbia | 250,000  | 250,000                              | 0   |
| Florida              | 1,812,269  | 670,070                              | 1,242,199   |
| Georgia              | 1,301,265  | 492,862                              | 808,403   |
| Hawaii               | 250,000  | 248,500                              | 1,500   |
| Idaho                | 250,000  | 0                                    | 250,000   |
| Illinois             | 2,167,348  | 781,329                              | 1,386,019   |
| Indiana              | 729,652  | 736,722                              | 0   |
| Iowa                 | 395,995  | 313,965                              | 83,030  |
| Kansas               | 305,867  | 284,808                              | 21,059  |
| Kentucky             | 816,693  | 1,076,011                            | 0   |
| Louisiana            | 1,088,089  | 464,482                              | 623,607   |
| Maine                | 250,000  | 250,000                              | 0   |
| Maryland             | 777,261  | 752,444                              | 24,817  |
| Massachusetts        | 1,073,422  | 730,849                              | 342,573   |
| Michigan             | 1,783,678  | 584,054                              | 1,199,624   |
| Minnesota            | 562,987  | 576,133                              | 0   |
| Mississippi          | 879,410  | 540,738                              | 338,672   |
| Missouri             | 758,872  | 584,738                              | 174,134   |
| Montana              | 250,000  | 250,000                              | 0   |
| Nebraska             | 250,000  | 158,898                              | 91,101  |
| Nevada               | 250,000  | 0                                    | 250,000   |
| New Hampshire        | 250,000  | 0                                    | 250,000   |
| New Jersey           | 1,517,559  | 402,243                              | 1,115,316   |
| New Mexico           | 357,354  | 212,107                              | 145,247   |
| New York             | 4,915,886  | 824,865                              | 4,091,021   |
| N. Carolina          | 1,085,219  | 1,068,550                            | 16,669  |
| North Dakota         | 250,000  | 454,171                              | 0   |
| Ohio                 | 1,597,624  | 433,442                              | 1,164,182   |
| Oklahoma             | 453,533  | 454,533                              | 0   |
| Oregon               | 383,166  | 233,988                              | 149,198   |
| Pennsylvania         | 2,261,974  | 700,703                              | 1,561,271   |
| Rhode Island         | 250,000  | 183,239                              | 66,761  |
| South Carolina       | 716,229  | 389,581                              | 326,648   |
| South Dakota         | 250,000  | 185,438                              | 64,562  |
| Tennessee            | 956,871  | 619,404                              | 337,467   |

|                     | I  | II                                   | III   |
|---------------------|--|--------------------------------------|---|
|                     | Estimated amount available at \$50 million appropriation | Estimated amount continuation grants | Estimated amount remaining available for new projects |
| Texas .....         | 2,979,120  | 1,198,570                            | 1,780,550   |
| Utah .....          | 250,000  | 242,149                              | 7,851   |
| Vermont .....       | 250,000  | 250,000                              | 0   |
| Virginia .....      | 921,172  | 400,863                              | 520,309   |
| Washington .....    | 541,249  | 477,570                              | 63,679  |
| West Virginia ..... | 434,205  | 318,174                              | 116,031   |
| Wisconsin .....     | 699,060  | 172,620                              | 526,440   |
| Wyoming .....       | 250,000  | 223,580                              | 26,420  |
| Puerto Rico .....   | 1,685,403  | 0                                    | 1,685,403   |

**Selection Criteria:** Selection criteria for the Even Start program are found in the program regulations at 34 CFR 212.21

#### Intergovernmental Review of Federal Programs:

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84,213, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

**PLEASE NOTE THAT THIS ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.**

#### Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,  
Application Control Center, Attention:  
(CFDA #84.213), Washington, DC  
20202-4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,  
Application Control Center, Attention:  
(CFDA #84.213), Room #3633,  
Regional Office Building #3, 7th and D  
Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

#### Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

**Part I:** Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

**Part II:** Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

**Part III:** Application Narrative. Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions. (NOTE: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:**  
Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400

Maryland Avenue, SW, room 2017, Washington, DC 20202-6132. Telephone: (202) 401-1692. Deaf and hearing impaired individuals may call: (202) 732-4538 for TDD services, or in the Washington, DC 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.

Authority: 20 U.S.C. 2741-2749.

Dated: January 29, 1991.

**John T. MacDonald,**  
*Assistant Secretary for Elementary and Secondary Education.*

**BILLING CODE 4000-01-M**



## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item:   | Entry: | Item:  | Entry: |
|---|--------|--|--------|
| 1. Self-explanatory.  |        | 12. List only the largest political entities affected (e.g., State, counties, cities).   |        |
| 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  |        | 13. Self-explanatory.  |        |
| 3. State use only (if applicable).  |        | 14. List the applicant's Congressional District and any District(s) affected by the program or project.  |        |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  |        | 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |        |
| 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   |        | 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |        |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  |        | 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |        |
| 7. Enter the appropriate letter in the space provided.  |        | 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |        |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |        |  |        |
| 9. Name of Federal agency from which assistance is being requested with this application.   |        |  |        |
| 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.   |        |  |        |
| 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.   |        |  |        |

OMB Approval No. 0348-0044

**BUDGET INFORMATION — Non-Construction Programs**

**SECTION A — BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds |                 | New or Revised Budget |                 | Total (g) |
|--|---|-----------------------------|-----------------|-----------------------|-----------------|-----------|
|  |   | Federal (c)                 | Non-Federal (d) | Federal (e)           | Non-Federal (f) |           |
| 1.                                     |   | \$                          | \$              | \$                    | \$              | \$        |
| 2.                                     |   |                             |                 |                       |                 |           |
| 3.                                     |   |                             |                 |                       |                 |           |
| 4.                                     |   |                             |                 |                       |                 |           |
| 5. TOTALS                              |   | \$                          | \$              | \$                    | \$              | \$        |

**SECTION B — BUDGET CATEGORIES**

| Object Class Categories                | GRANT PROGRAM, FUNCTION OR ACTIVITY |     |     |     | Total (5) |
|--|-------------------------------------|-----|-----|-----|-----------|
|  | (1)                                 | (2) | (3) | (4) |           |
| a. Personnel                           | \$                                  | \$  | \$  | \$  | \$        |
| b. Fringe Benefits                     |                                     |     |     |     |           |
| c. Travel                              |                                     |     |     |     |           |
| d. Equipment                           |                                     |     |     |     |           |
| e. Supplies                            |                                     |     |     |     |           |
| f. Contractual                         |                                     |     |     |     |           |
| g. Construction                        |                                     |     |     |     |           |
| h. Other                               |                                     |     |     |     |           |
| l. Total Direct Charges (sum of 6a-6h) |                                     |     |     |     |           |
| j. Indirect Charges                    |                                     |     |     |     |           |
| k. TOTALS (sum of 6i and 6j)           | \$                                  | \$  | \$  | \$  | \$        |
| 7. Program Income                      | \$                                  | \$  | \$  | \$  | \$        |

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| SECTION C - NON-FEDERAL RESOURCES   |                                |             |                   |             |             |
|---|--------------------------------|-------------|-------------------|-------------|-------------|
| (a) Grant Program   | (b) Applicant                  | (c) State   | (d) Other Sources | (e) TOTALS  |             |
| 8.  | \$                             | \$          | \$                | \$          | \$          |
| 9.  |                                |             |                   |             |             |
| 10.   |                                |             |                   |             |             |
| 11.   |                                |             |                   |             |             |
| 12. TOTALS (sum of lines 8 and 11)  | \$                             | \$          | \$                | \$          | \$          |
| SECTION D - FORECASTED CASH NEEDS   |                                |             |                   |             |             |
|   | Total for 1st Year             | 1st Quarter | 2nd Quarter       | 3rd Quarter | 4th Quarter |
|   | \$                             | \$          | \$                | \$          | \$          |
| 13. Federal   |                                |             |                   |             |             |
| 14. NonFederal  |                                |             |                   |             |             |
| 15. TOTAL (sum of lines 13 and 14)  | \$                             | \$          | \$                | \$          | \$          |
| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT |                                |             |                   |             |             |
| (a) Grant Program   | FUTURE FUNDING PERIODS (Years) |             |                   |             |             |
|   | (b) First                      | (c) Second  | (d) Third         | (e) Fourth  |             |
| 16.   | \$                             | \$          | \$                | \$          |             |
| 17.   |                                |             |                   |             |             |
| 18.   |                                |             |                   |             |             |
| 19.   |                                |             |                   |             |             |
| 20. TOTALS (sum of lines 16-19)   | \$                             | \$          | \$                | \$          |             |
| SECTION F - OTHER BUDGET INFORMATION<br>(Attach additional Sheets if Necessary) |                                |             |                   |             |             |
| 21. Direct Charges:   |                                |             |                   |             |             |
| 22. Indirect Charges:   |                                |             |                   |             |             |
| 23. Remarks   |                                |             |                   |             |             |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary  
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** — Show the amount of indirect cost.

**Line 6k** — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

## INSTRUCTIONS FOR THE SF-424A (continued)

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agency should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

**Part III**

**Application Narrative**

Before preparing the application narrative, applicants should read carefully the Even Start programmatic requirements in the Act, 20 U.S.C. 2741-48, and the applicable regulations (34 CFR Part 212). The narrative should encompass each function or activity for which funds are being requested and should be presented in the following sequence—

A. Begin with an abstract—a summary of the proposed project.  
 B. Describe a plan of operation containing the six items required in section 1056(c) of the Act, 20 U.S.C. 2746(c) as follows:

1. A description of the project goals and objectives. Express objectives in measurable terms against which the progress of the project can be evaluated.
2. A description of the activities and services that will be provided by the project. The seven program elements required by section 1054(b) of the Act, 20 U.S.C. 2744(b), must be included, as follows:

- the identification and recruitment of eligible children, including a description of the outreach methods to be used to identify families not currently associated with the schools of the LEA;
- screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services;
- design of project and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—
  - scheduling and location of services to allow joint participation by parents and children;
  - child care for the period that parents are involved in the Even Start project; and
  - transportation for the purpose of enabling parents and their children to participate in the Even Start project.
- the establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs;
- provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through Even Start (including child care staff in programs enrolling children of Even Start participants on a space available basis);
- provision of and monitoring of integrated instructional services to participating parents and children through home-based programs; and
- coordination of the Even Start project with programs assisted under Chapter 1 and any relevant programs under Chapter 2 of Title I of the Act, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

3. A description of the population to be served. (An estimate of the number of participants is to be provided in Part IV (B)).

4. If appropriate, a description of the collaborative efforts of the institutions of

higher education, community-based organizations, the appropriate State educational agency, or other appropriate nonprofit organizations in carrying out the project for which assistance is sought;

5. A statement of the methods which will be used—

- to ensure that the project will serve those eligible participants most in need of the Even Start activities and services.
- to provide Even Start services to special populations, such as individuals with limited English proficiency and individuals with handicaps; and
- to encourage participants to remain in the project for a time sufficient to meet project goals; and

6. A description of the methods by which the applicant will coordinate the proposed Even Start project with programs under chapter 1 and chapter 2, where appropriate, of Title I of the Act, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs and other relevant programs.

C. Complete the narrative by addressing each selection criterion in the order in which the criteria are listed in 34 CFR 212.21. Where appropriate the applicant should reference sections of the narrative and data sheets rather than repeat information here.

D. Include any other pertinent information that might assist the Secretary in reviewing the application.

E. Supply necessary data on the data sheets in Part IV. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications under this program generally meet this page limit. Supplemental documentation and data sheets, (D) and (E) above, should be appended to the narrative and need not be counted as part of the 25 pages.

**Part IV**

**Even Start Program**

*Data Sheet*

*A. Information on additional funds*

(1) Estimate the additional funds necessary to meet the requirements of section 1054(c) of the Act, which provides that the Federal share of the total cost of the project may be no more than 90% in the first year of the project, 80% in the second year, 70% in the third year, and 60% in the fourth and any subsequent year. Additional funds may be obtained from any source other than funds made available for programs under Title I of the Act.

| Year   | Requirement | Amount   | Source of funds |
|--------|-------------|----------|-----------------|
| 1..... | 10%         | \$ _____ | _____           |
| 2..... | 20%         | \$ _____ | _____           |
| 3..... | 30%         | \$ _____ | _____           |
| 4..... | 40%         | \$ _____ | _____           |

(2) If other Federal or State funds are listed as the source for additional funds, how will

the applicant meet the requirements of section 1054(c) of the Act in the event that such Federal or State funds are not available?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**B. Information on eligible participants.**

|   |         |
|---|---------|
| 1. Total number of eligible children and parents in applicant's Chapter 1 elementary attendance areas, not currently receiving family-centered services similar to those described in the Even Start statute, 20 U.S.C. 2741-48. (Refer to 212.21(b)(3) of the regulations for definition of "similar family-centered services")..... | _____   |
| 2. Number of eligible children and parents in (1) above to be served by this project.....   | _____   |
| 3. Percentage of eligible children and parents described in (1) above to be served by this project [(2) ÷ (1)].....   | _____ % |

Describe the procedures used to determine the number of eligible children and parents not currently served in (1) above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Explain the rationale used to determine the number of children and parents to be served by this project in (2), above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C. Applicant represents [ ] urban [ ] rural area.

Check "urban" if the LEA is within a Standard Metropolitan Statistical Area (SMSA) as designated by the United States Department of Commerce, Bureau of Census. Check "rural" if the LEA is outside the boundary of a SMSA. If the LEA is within both designations, check the area in which the majority of participants reside.

*Documentation*

D. Attach documentation to demonstrate that the applicant has the qualified personnel required—

- (1) to develop, administer, and implement the project, and
- (2) to provide special training necessary to prepare staff for the project.

E. Attach documentation to demonstrate that the applicant has arranged for the services of an experienced evaluator to assist in the development of the applicant's evaluation plan and to coordinate that plan with the Secretary's independent evaluation.

F. Applicant certifies that an open meeting was held on \_\_\_\_\_, 19\_\_\_\_ to provide the opportunity for the public to comment on the subject matter of this application.

Authorized LEA representative

\_\_\_\_\_

| Title                                    |   |  |
|--|---|--|
| Date                                     |   |  |
| <b>Estimated Public Reporting Burden</b> | reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for | reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0540, Washington, DC 20503.<br>(Information collection approved under OMB control number 1810-0540. Expiration date: 6/91.) |

BILLING CODE 4000-01-M

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

|   |                |
|---|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE          |
| APPLICANT ORGANIZATION                      | DATE SUBMITTED |

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

|   |                                     |
|---|-------------------------------------|
| NAME OF APPLICANT                                   | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |                                     |
| SIGNATURE   | DATE                                |



**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local Reproduction  
Standard Form - LLL-A

DISCLOSURE OF LOBBYING ACTIVITIES  
CONTRIBUTOR'S STATE

Reporting Date: \_\_\_\_\_

| Item                          | Amount |
|-------------------------------|--------|
| 1. Federal Government         |        |
| 2. State Government           |        |
| 3. Local Government           |        |
| 4. Foreign Government         |        |
| 5. International Organization |        |
| 6. Other Governmental Entity  |        |
| 7. Total                      |        |

Signature of Contributor: \_\_\_\_\_  
Date: \_\_\_\_\_

Form No. 2770 (1-78) U.S. GOVERNMENT PRINTING OFFICE: 1978

# **federal register**

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**Monday  
February 4, 1991**

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**Part VIII**

**Department of  
Housing and Urban  
Development**

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**Office of the Secretary**

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**24 CFR Subtitle A  
HOPE for Public and Indian Housing  
Homeownership Program; Notice of  
Program Guidelines**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**Office of the Secretary**
**24 CFR Subtitle A**

[Docket No. N-91-3199; FR-2966-N-01]

**HOPE for Public and Indian Housing  
Homeownership Program; Notice of  
Program Guidelines**
**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of program guidelines under 42 U.S.C. 12898.

**SUMMARY:** This notice announces HUD's guidelines, for immediate effect, for the operation of the HOPE for Public and Indian Housing Homeownership program (HOPE 1) that provides for homeownership by low-income families. Elsewhere in today's issue of the Federal Register, HUD is publishing notices to implement the other two HOPE grant programs:

HOPE for Homeownership of Multifamily Units (HOPE 2); and HOPE for Homeownership of Single Family Homes (HOPE 3). The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

While the three notices for the HOPE programs are similar in many respects, there are differences HUD has determined to be appropriate due to differences in what types of property are eligible, who may apply for grants, and other program features. HUD specifically invites comments on differences among the programs and whether the differences increase efficient administration of the programs, as well as suggestions for additional differences or elimination of differences among the programs. These comments will be taken into consideration, along with others requested below, in developing the final rules for the programs.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 1 program will be the development of resident-based organizations that will have central responsibilities for the program.

The authorizing legislation provides for implementation by publication of a notice for effect. HUD invites public comment on this notice of program guidelines and will consider the comments in developing the final rule for the program. As required by the

statute, HUD will publish the final rule within eight months of the date the Notice of Funding Availability (NOFA) for the HOPE program is published.

When Congress appropriates funds for this program, HUD will publish a NOFA advising potential applicants how to obtain an application packet and establishing deadlines and other requirements for submission of applications.

**DATES:** *Effective date:* February 4, 1991.

*Comment due date:* May 6, 1991. Those sections of these Guidelines that contain information collection requirements (sections 310, 415, 801, and 805) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by HUD in the Federal Register.

**ADDRESSES:** Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections 310, 415, 801, and 805 should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20303. Attention: Wendy Sherwin, Desk Officer for HUD.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is 202-708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (voice 202-708-2084 or, for persons who are hearing- or speech-impaired, TDD 202-708-3258).

**FOR FURTHER INFORMATION CONTACT:** Gary Van Buskirk, Homeownership Division for Public and Indian Housing, room 4112, 202-708-4233. To provide

service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

A potential applicant may submit a written request to the person specified immediately above, requesting that its name be placed on a mailing list for the receipt of application packets that will be mailed after publication of the NOFA.

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for expedited review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the Federal Register.

The annual public reporting burden for the collection of information collection requirements contained in this notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under part X, Other Matters. Comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent by March 6, 1991, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Wendy Sherwin, Desk Officer for HUD. At the end of the public comment period on this notice, the Department may amend the information collection requirements set out in this notice to reflect public comments or OMB comments received concerning the information collections.

**Editorial Note:** These program guidelines will appear in an appendix to

subtitle A of title 24 of the Code of Federal Regulations.

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#### I. Purpose; Summary; and Relationship to Other Programs

#### Section 101. Purpose.

The purpose of the HOPE 1 program is to provide homeownership opportunities for eligible families to purchase multifamily and non-scattered site, single family public and Indian housing.

**Section 105. Summary.**

Under the HOPE 1 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient will use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved homeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one notification of funding availability. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched from non-Federal sources. (Indian tribes and certain IHAs may be exempt; see section 410(d).) Units must meet specified quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

**Section 110. Relationship to other programs.**

(a) *Waiver of section 8 regulations.* HUD may make section 8 authority available for use in support of the HOPE 1 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families. Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the section 8 Certificate and Housing Voucher programs.

HUD will soon publish a final rule amending 24 CFR part 791, which governs the allocation of housing assistance under the section 8 and

certain other programs, to take into account changes made by the Department of Housing and Urban Development Reform Act of 1989. At that time, HUD will also amend part 791 to permit HUD to set aside section 8 authority for use in connection with the program.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8 assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers by very low-income families. (section 413(a) of the Cranston-Gonzalez National Affordable Housing Act amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation, and invites public comment.

(b) *Right to purchase.* Where HUD approves an application providing for the transfer of title to a public or Indian housing development from the PHA/IHA to another applicant or entity, the PHA/IHA shall transfer the development to the other applicant or entity, in accordance with the approved homeownership program.

(c) *Relationship to other homeownership programs.* Homeownership opportunities under the HOPE 1 program are in addition to any other public and Indian housing

homeownership and management opportunities, including opportunities under section 5(h) and title II of the 1937 Act.

(d) *Inapplicability of section 18.* The requirements of section 18 of the 1937 Act, governing demolition and disposition of public or Indian housing, do not apply to the HOPE 1 program. See section 18(e) of the 1937 Act, which was added by section 412(b) of the Cranston-Gonzalez National Affordable Housing Act.

(e) *Section 8 ACCs.* Section 413(b) of the Cranston-Gonzalez National Affordable Housing Act authorizes HUD to enter into annual contributions contracts with PHAs/IHAs for the purpose of replacing public or Indian housing transferred under the HOPE 1 program with section 8 certificate and voucher assistance. The section 8 annual contributions contract shall be for a term of up to five years.

(f) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice.

(g) *Section 20(f) assistance for RMCs and RCs.* HUD may not provide additional assistance under section 20(f) of the 1937 Act to any RMC or RC if assistance for its development or formation is provided under the HOPE 1 program.

(h) *Continuation of annual contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under this program, or the purchase of a unit in a public or Indian housing development by an eligible family, HUD shall continue to pay any annual contributions still payable with respect to the development, subject to section 5(a) of the 1937 Act.

(i) *Operating subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice. The implementation grant may be used to cover the estimated amount of any shortfall in operating income after transfer by the PHA/IHA.

(j) *Reservation of section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance to the extent necessary to provide replacement housing and rental assistance for a nonpurchasing resident who resides in

an eligible property on the date HUD approves an implementation grant, for use by the resident in another property. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 1 program. See paragraph (a) for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(k) *Variations to FHA single family mortgage insurance programs.* All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in this paragraph.

(1) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE program may provide the down payment for the eligible family/mortgagor, section 429 of the Cranston-Gonzalez National Affordable Housing Act amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), §§ 203.32(b), 234.28(c) and 234.55(b) are being amended by an interim rule published elsewhere in today's edition of the Federal Register. These amendments provide that a mortgagor being assisted in the purchase of a housing unit by Cranston-Gonzalez National Affordable Housing Act may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

(2) The FHA regulations are being amended as follows:

(i) Section 203.19(b)—by inserting the following language after the "Housing Act of 1961": "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(ii) Section 203.32(b)—by inserting after "instrumentality" the following: "or entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity Through HOPE Act."

(iii) Section 234.28(c)—by inserting after "as of the date the mortgage is accepted for insurance" the following: "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(iv) Section 234.55(b)—by inserting after "instrumentality" the following: "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

## II. Definitions

*1937 Act.* The United States Housing Act of 1937.

*Administrative costs.* Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A-87 or A-122, as applicable, incurred by a recipient in carrying out a homeownership program under this notice. Administrative costs do not include the costs of activities which are separately eligible under section 405 or section 410.

*Applicant.* The following entities that may represent the residents of the eligible property:

- (a) An RMC (resident management corporation).
- (b) An RC (resident council).
- (c) A cooperative association.
- (d) A public or private nonprofit organization.
- (e) A public body, including an agency or instrumentality thereof.
- (f) A PHA (public housing agency).
- (g) An IHA (Indian housing development).

*Census region.* One of the four regions defined by the Bureau of the Census. HUD will identify the Census regions in the application packet.

*CHAS.* A comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act.

*Cooperative association.* An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

*Eligible family.*

- (a) A low-income family; or
- (b) A family or individual who is a resident in the public or Indian housing development on the date HUD approves an implementation grant; or
- (c) A family or individual who is assisted under a housing program administered by HUD or the Department of Agriculture (not including any non-low-income families assisted under any

mortgage insurance program administered by either Department).

*Eligible property.*

A public or Indian housing development, other than scattered-site single family properties. Properties with up to four units qualify as single family properties. Single family public housing properties that are contiguous to other single family public housing properties are eligible under HOPE 1.

*Homeownership program.* A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

*HUD.* The United States Department of Housing and Urban Development.

*IHA.* An Indian housing authority, which means any entity that—

- (a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and
- (b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

*Indian housing development.* An Indian public housing project under the 1937 Act.

*Low-income family.* A family or individual that qualifies as a low-income family under 24 CFR part 913 or, for Indian housing development, part 905. The Cranston-Gonzalez National Affordable Housing Act changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR part 913 defines the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

*Nonprofit organization.* Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

**Ownership interest.** Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest.

**PHA.** A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

**Private nonprofit organization.** A nonprofit organization that is privately controlled. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

**Public body.** Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public body or instrumentality

of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 1 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

**Public housing development.** A public housing project under the 1937 Act.

**RC.** A resident council, which means any incorporated non-profit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

**Recipient.** An applicant approved to receive a grant under this notice or such other entity specified in the approved application and approved by HUD that will assume the obligations of the recipient under this notice.

**RMC.** A resident management corporation that proposes to enter into, or enters into, a management contract with a PHA for an eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

### III. Planning Grants

#### Section 301. Planning grants.

(a) **General authority.** HUD will make HOPE 1 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one planning grant in each of the four Census regions. HUD anticipates funding on the basis of allocations to the 10 HUD Regions for future, larger funding rounds.

(b) **Planning grants.** (1) Applicants may request a full planning grant covering all necessary planning activities specified in section 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in section 305(a), (b), (c), and (f). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(2) The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant. The maximum amount for a mini planning grant shall be \$100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than \$200,000 (or of more than \$100,000 in the case of mini planning grants) is required.

(3) Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has approved a mini planning grant for the proposed program).

(c) *Set-aside.* HUD shall allocate up to 15 percent of the total amount appropriated for grants under the HOPE 1 program for planning grants, but not less than \$10 million. Of the amount set aside for planning grants, 25 percent shall be set aside for mini planning grants.

**Section 305. Eligible planning grant activities.**

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs, including—

(a) *Development of RMCs and RCs.*

Development of RMCs and RCs in connection with a specific homeownership program, including activities such as—

(1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specified in paragraphs (a) (1) through (4).

(b) *Training and technical assistance.*

Training and technical assistance for applicants related to development of a specific homeownership program. This activity may cover such topics as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.*

Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) *Counseling and training.* Resident and homebuyer counseling and training. This activity may cover such topics as the various ways to become a

homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) *Economic development.* (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that there is a direct relationship between the proposed activities and the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed \$250,000 for any single homeownership program.

(g) *Security plans.* Development of security plans.

(h) *Application for implementation grant.* Preparation of an application for an implementation grant under this notice.

(i) *Other activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

**Section 310. Applications for planning grants.**

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA to be published by HUD when funds become available. HUD will not accept any applications until after publication of the NOFA. The NOFA will advise potential applicants how to obtain an application packet and establish deadlines and other requirements for submission of applications.

(b) *Application contents.* Each application shall contain the information required by the application packet, which shall include at least the following items.

(1) *Request for planning grant.* (i)(A) The application shall contain a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding \$200,000 if the development has 250 or fewer units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed program will cover all eligible activities necessary to make the proposed program feasible, whether or not the

application requests HUD funding for each activity.

(2) *Qualifications and experience of applicant.* The application shall describe the applicant and contain a statement of its qualifications. HUD encourages two or more entities to submit applications together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(3) *Eligible property.* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application packet. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS certification.* The application shall contain a certification by the public official who submits the CHAS that—

(i) The proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located; or

(ii) For an application submitted on or before November 27, 1991, for an eligible property that is not within the jurisdiction of a State or unit of general local government that has an approved CHAS, the application is consistent with an existing State or local housing plan or strategy, as HUD determines to be appropriate, which may include a housing assistance plan under the Community Development Block Grant program.

This paragraph shall not apply to an application submitted by an IHA. IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy. However, an applicant proposing the use of Indian housing shall submit a tribal plan that outlines a housing strategy that is consistent with the development plans of other Federal agencies having responsibility for Indian

land. The applicant shall demonstrate that its proposed homeownership program is consistent with the tribal plan.

(5) Equal opportunity certifications. (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) A statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Resident interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a board resolution from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. In all cases, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application packet.

(7) *Disclosures required by Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101-235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information to be required by 24 CFR part 12, the regulation that will implement section 102 of the Reform Act. HUD expects the requirements of part 12 to go into effect

before the deadline that will be established for the submission of applications.

(8) *Other requirements.* The application shall contain certifications and other information required under part V, Other Requirements.

(c) *Screening.* (1) HUD shall screen each submitted application to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or corrected material no later than close-of-business of the appropriate HUD office on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of this paragraph, initially or after the opportunity to submit additional or corrected material.

(2) The purpose of this procedure is to increase the number of approvable applications so eligible families will have the best opportunities to become homeowners at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications. HUD invites comments on this policy, including recommendations on whether it should be adopted or modified in the final regulations.

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. In assigning

points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or an explanation of how such capability will be obtained—10 points;

(ii) The applicant has direct experience in working with and representing residents of public or Indian housing developments—10 points.

(iii) The potential for developing a successful, affordable program, taking into account (A) the extent to which the applicant demonstrates that it understands the planning required to implement a homeownership program; (B) the extent to which the proposal represents a sound approach to the planning process; and (C) the extent of the applicant's experience in providing services to residents—10 points.

Maximum points for this criterion (1): 30 points.

(2) *Resident and home buyer interest and marketability.* The extent of resident and home buyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) 75 percent or more of the residents are interested: 15 points;

(B) 50-74.99 percent of the residents are interested: 10 points; or

(C) Less than 50 percent of the residents interested: 0 points.

(ii) Where the development is 50 percent or more vacant, HUD shall assign points based on the number of interested eligible families residing in other developments of the PHA/IHA. The purpose of the survey is to determine if there is a sufficient pool of eligible families in other developments interested in purchasing units in the proposed eligible property.

(A) If there are 1.5 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 15 points;

(B) If there are 1.2-1.49 interested eligible families for each unit in the proposed property not occupied by a

family interested in homeownership: 10 points.

(C) If there are less than 1.2 eligible families: 0 points.

(iii) Where the applicant is an RMC or RC, HUD shall assign an additional 5 points.

Maximum points for this criterion (2): 20 points

(3) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to family life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the eligible property are being actively mitigated; and

(iii) Whether the structure type and bedroom configuration is (or has the potential, through rehabilitation, to become) appropriate for the proposed homeownership program.

The purpose of this criterion is to assure that properties in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (3): 20 points.

(4) *Local support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments, PHAs/IIAs and community, civic, religious, or other entities; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program.

The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 20 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit, the greater the efficiency.

Maximum points for this criterion (5): 10 points.

Total number of points: 100 points.

(b) *Ranking and selection to assure national geographic diversity.* (1) After assigning points to each application under paragraph (a), HUD shall separately rank mini planning grant applications together and full planning grants together. HUD shall first identify for selection the highest ranking application on each list (one containing only mini applications and the other containing the rest) from each of the four Census regions. HUD shall then identify for selection from each list the highest ranking applications without regard to their location.

(2) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(3) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraph (f).

(c) *Use of set-aside to fund implementation grants.* Any amounts set aside to fund applications for mini planning grants that are not needed because there are insufficient approvable applications shall be used first to fund applications for full planning grants and then to fund implementation grants. Any amounts set aside to fund applications for full planning grants that are not needed because there are insufficient approvable applications shall be used first to fund applications for mini planning grants and then to fund implementation grants.

(d) *Reduction in requested grant amounts.* HUD shall approve a planning grant application for an amount lower than the amount requested where it determines the amount requested for one or more eligible activities is

unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of approval or disapproval.* After completion of the ranking and selection of proposals under paragraph (b), HUD shall notify the selected applicants and the applicants that have not been selected, in writing.

(f) *Insufficient approvable applications.* If funds remain after HUD approves all approvable applications, including implementation grants as provided in this notice, HUD may invite additional applications or invite applicants who submitted applications that could not be funded to submit amended planning grant applications within a deadline specified in the invitation, subject to the limitations specified in section 310(c). Any remaining amounts shall be added to amounts available for subsequent funding rounds.

(g) *Inapplicability of environmental review requirements.* HUD has determined that an environmental review of applications for planning grants is not required because planning grants involve no rehabilitation and little or no physical change and because, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD intends to exempt planning grant applications from environmental review by issuing a final rule amending 24 CFR part 50 at the time the final rule for the HOPE programs is issued. HUD is in the process of consulting with the Council on Environmental Quality on this matter. CEQ regulations require this consultation before an agency may issue an amendment to its environmental regulations. While HUD will carefully consider environmental concerns in assigning points for suitability of the property at the planning grant stage, the environmental review at the implementation grant stage may nevertheless result in disapproval.

#### IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *National competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each

of the four Census regions. HUD anticipates funding on the basis of allocations to the 10 HUD Regions for future, larger funding rounds.

Section 405. Eligible implementation grant activities.

(a) *Cost limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs.

(b) *Eligible activities.* Eligible activities include—

(1) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of homeownership program—(i) General.* Implementation of the homeownership program, including the provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum acquisition costs.* The cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to waive this limitation to permit use of program funds to pay the PHA/IHA for the depreciated value of the amount of local tax revenues spent on such improvements. The request for the waiver shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD. The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is prohibited. The cost to fill in or eliminate a pool from the property and

the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The prototype cost cap on rehabilitation shall be based on the cost guidelines applicable to the CIAP program.

(4) *Administrative costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* (i) Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See section 305(a) for examples of eligible activities.

(ii) Funding for this activity may not be provided for an RMC or RC that has received funding under section 20(f) of the 1937 Act, unless the applicant submits work plans used in connection with previous grants demonstrating to HUD's satisfaction that the implementation grant will not be duplicative.

(6) *Counseling and training.* Counseling and training of home buyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary relocation.* Any necessary temporary relocation of

residents during rehabilitation, in accordance with section 735.

(9) *Assistance for operating expenses.* (i) Funding of operating expenses for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property from the PHA/IHA by the applicant or, if the PHA will transfer the property to eligible families, beginning after transfer to the families. Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) The amount of assistance for operating expenses shall not exceed the amount the development would have received if it had continued to receive operating subsidies under 24 CFR part 990, with adjustments comparable to those that would have been made under part 990, as determined by HUD based on actual or estimated cost experience of the development in the year before the proposed sale by the PHA/IHA. Where the actual or estimated costs for that year are unavailable or atypical, the application shall propose an adjustment factor and justify it.

(iv) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the PHA/IHA transfers the property. If HUD determines that extraordinary circumstances exist, as described in the application or at the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year periods, subject to the availability of appropriations. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications

which propose operating assistance for five years or less will be at a competitive advantage.

(v) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Replacement housing plan.* Implementation of replacement housing plan activities under section 415(b)(8)(i)(E).

(12) *Legal fees.* Customary and reasonable costs of professional legal services.

(13) *Ongoing training needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(14) *Economic development.* (i) Economic development activities that promote economic self-sufficiency of home buyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and home owners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of home buyers and homeowners of the eligible property covered by the home ownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed \$250,000.

(15) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them.

Section 410. Matching requirements.

(a) *Requirement for each recipient to match the HUD grant.* (1) Each recipient shall assure that matching contributions equal to not less than 25 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount of the match.

(2) Contributions for eligible administrative costs may be recognized for matching purposes only up to an amount equal to 7 percent of the amount of the implementation grant (excluding any grant amounts proposed for operating assistance). (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).)

(3) For example, if the grant amount is \$500,000 (excluding any operating assistance), the recipient must assure the provision of at least \$125,000 (25 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed \$35,000 (7 percent of the grant amount of \$500,000). The applicant shall provide contributions covering the remaining \$90,000 (\$125,000 - \$35,000) required for the match from non-Federal sources. Although an applicant can spend more than this on administrative costs, it may not be counted towards the match.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash contributions from non-Federal resources.* Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (b)(2). Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development

from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(2) *Administrative costs.* Payment of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act.

(3) *Taxes, fees, and other charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if the PHA will transfer to eligible families) may be counted towards the match. For example, if a city agrees to forego real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, foregone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under this paragraph (b)(3), the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or other real property.* Real property contributed for use under an approved homeownership program.

(i) For HOPE 1, the cost of acquisition of eligible property is not an eligible cost and, therefore, the value of such a development may not be counted as a contribution towards the match.

(ii) The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent

appraisal conducted under procedures established or approved by HUD.

(5) *Infrastructure.* The fair market value of investment in on-site and off-site infrastructure required for a homeownership program. Only expenditures for capital improvements made after the date of notification by HUD of implementation grant approval that are the physical improvements directly related to and necessary for the homeownership program may be counted towards the match. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match. HUD specifically invites comments on what investment in infrastructure should count and how to value it.

(6) *Debt forgiveness.* Where debt on real property to be acquired under the program (other than a public or Indian housing development) is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding the fair market value of a property under the program, determined under paragraph (b)(4), may not be counted towards the match.

(7) *Other in-kind contributions.*

(i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program, (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at \$5 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor

for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations.

(c) *Other restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian housing authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA to be published by HUD when funds become available. HUD will not accept any applications until after publication of the NOFA. The NOFA will advise potential applicants how to obtain an application packet and establish deadlines and other requirements for submission of applications.

(b) *Application contents.* Each application shall contain the information required by the application packet, which shall include at least the following items.

(1) *Request for HOPE grant.* (i) The application shall contain a request for an implementation grant; (ii) a description of the personnel necessary to complete the activities; (iii) the amount of the grant requested for each activity; and (iv) a summary description of the proposed homeownership program. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligible property for assistance under section 8 of the 1937 Act, specifying the period during

which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed to comply with the replacement housing plan requirement or for nonpurchasing residents for use in another property, or both.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization for may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(ii) Where the applicant is an RMC or RC, the application shall demonstrate its ability to manage a public or Indian housing development by having done so effectively and efficiently for a period of not less than three years or by arranging for management by a qualified management entity.

(4) *Description of proposed homeownership program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application packet (see, especially, section 405, Eligible Implementation Grant Activities and part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families.

(5) *Plan—(i) Identifying and selecting families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also

describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership;

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS;

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so;

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence;

(E) Require each eligible family to agree not to lease or otherwise make the property available for occupancy by other residents during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation;

(F) Require any eligible family that violates the agreement made under paragraph (E) to pay the amount then due under the promissory note; and

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing relocation.* The application shall describe the proposed

relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, and other available resources (including, for example, section 8 assistance).

(iii) *Managing sweat equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing ongoing training and counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a list of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of a public or Indian housing development shall involve acquisition and rehabilitation of all of the units in the development. HUD may permit acquisition or rehabilitation of less than the whole development if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the development is feasible and will not result in a hardship to the residents of the development who are not included in the homeownership.

(7) *Housing quality standards plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat and that the property has passed

recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or, if no local code exists, the housing quality standards established by HUD for the section 8 Certificate program.

Higher standards may be proposed by the applicant or required by lenders.

(8) *Replacement housing plan.* The application shall contain a replacement housing plan.

(i) Public or Indian housing developments may not be transferred by the PHA/IHA under the HOPE 1 program unless HUD has entered into a binding agreement with the local PHA/IHA to make available to the PHA/IHA Federal funding assistance under paragraphs (b)(8)(i) (A) through (C) and (E), or another appropriate entity has entered into a binding agreement to make available to the PHA/IHA or other applicant, as appropriate, assistance under paragraphs (b)(8)(i) (D) and (E), to provide an additional decent, safe, sanitary, and affordable dwelling unit as a replacement for each unit in a public or Indian housing development to be transferred by the PHA/IHA.

Replacement housing may consist of one or more of the following methods—

(A) The development of additional public or Indian housing units by the PHA/IHA in accordance with section 5 of the 1937 Act. The PHA/IHA shall execute an annual contributions contract (ACC) for the additional units before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The units under the ACC must have been identified in the application for the units as replacement housing.

(B) The rehabilitation of vacant public or Indian housing units by the PHA/IHA in accordance with section 14(n)(1) of the 1937 Act. The PHA/IHA shall execute an ACC for the modernization assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The assistance under the ACC must have been identified in the application under the Comprehensive Improvement Assistance program or in the comprehensive plan under the Comprehensive Grant program as assistance to be used to rehabilitate vacant units as replacement housing.

(C) The use of 5-year, tenant-based rental assistance under the section 8 Certificate and Housing Voucher

programs. The PHA/IHA shall execute an ACC for the additional section 8 certificate or voucher assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The units under the ACC must have been identified in the application for the units as replacement housing.

(D) The use of a State or local program that is comparable to any of the Federal programs referred to in (A) through (C) as to housing standards, eligibility, and contribution to rent, and provides a term of assistance of not less than five years.

(E) Where the applicant is an RMC, RC, or cooperative association, the acquisition of nonpublicly-owned housing units before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program, which the applicant shall operate as rental housing comparable to public or Indian housing as to term of assistance, housing standards, eligibility, and contribution to rent. Funding for each replacement unit may be provided from the implementation grant or another source for which the applicant has a firm commitment.

(ii) Assistance that has already been counted as meeting replacement housing requirements under the HOPE 1 program or under sections 5(h), 18, or 21 of the 1937 Act may be counted again as replacement housing.

(iii) The plan shall include a certification from the PHA/IHA that it concurs with the proposed replacement housing plan and will take all necessary steps to carry it out.

(9) *Match requirements.* The application shall describe, and contain commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. The applicant should submit a document evidencing a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(1) *Disclosure under Reform Act.* Section 102(b) of the HUD Reform Act, Public Law 101-235 (December 15, 1989) requires disclosure of other information concerning other government assistance

to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information to be required by 24 CFR part 12, the regulation that will implement section 102 of the Reform Act. HUD expects the requirements of part 12 to go into effect before the deadline that will be established for the submission of applications.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition by eligible families or ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer or an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy by low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(vi) (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(d) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7)) or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

Indian housing development trust land may not be used as collateral.

(v) Recipients and homeowners continue to be subject to paragraphs (b)(11)(iv) (A) through (D) during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability.*—(i) *Initial affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or, for Indian housing developments, part 905. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the 30 percent limitation in paragraph (b)(12)(i), plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall not exceed 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or 905, as appropriate. The applicant may request HUD to approve a higher percentage cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under this paragraph (b)(12).

(ii) *Continued affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii); however, a proforma is not required

under HOPE 1 for single family property that does not involve significant common ownership. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma*. The plan shall include a "proforma" that sets forth estimated project costs and income over a 20-year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the PHA/IHA, will transfer to eligible families). The proforma shall be prepared in accordance with the following requirements and guidelines:

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraphs (b)(12)(i) (A) and (B).

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD and NOFA.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of section 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds

aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement reserves*. The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas), and (D) other possible replacement needs. The requirement for replacement reserves shall not apply, in the case of single family property, where the applicant demonstrates that the financial status of eligible families is sufficient (taking into account insurance requirements and home maintenance repair capability of the family) so there is not a need for such reserves.

(13) *Sales price to applicant or other entity*. The application shall specify the terms of the proposed transfer to the entity, if any, that will acquire the property for sale to eligible families. If the applicant is a PHA/IHA that proposes to sell directly to eligible families, this paragraph (b)(13) shall not apply. The necessary information is covered by paragraph (b)(14).

(14) *Sales prices and terms of sale to eligible families; form of ownership*. (i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing. An applicant may permit a family to meet its down payment obligation through "sweat equity" performed before closing.

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet

down payment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program.

(iv) See section 110(k) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale restrictions, if any*. The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management entity*. The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract. Where homeowners will have full responsibility (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(17) *CHAS certification*. The application shall contain a certification by the public official who submits the CHAS that—

(i) The proposed activities (including activities related to the replacement housing plan) are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located; or

(ii) For an application submitted on or before November 27, 1991, for an eligible property that is not within the jurisdiction of a State or unit of general local government that has an approved CHAS, the application is consistent with an existing State or local housing plan or strategy, as HUD determines to be appropriate, which may include a housing assistance plan under the Community Development Block Grant program.

This paragraph shall not apply to an application submitted by an IHA. IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy. However, an applicant proposing the use of Indian housing shall submit a tribal plan that outlines a housing strategy that is consistent with the development plans of other Federal agencies having responsibility for Indian land. The applicant shall demonstrate that its proposed homeownership program is consistent with the tribal plan.

(18) *Equal opportunity certification*. (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a certification from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application packet.

(20) *Public hearing.* The application shall contain documentary evidence that the applicant held at least one public hearing regarding the sale of the eligible property proposed for use under the program, with a summary of the views expressed by residents and other members of the public and the response by the applicant.

(21) *Plan for use of certain program income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(22) *Nondisplacement; participation by residents.* The application shall contain a certification by the applicant that no person has been or will be

displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(23) *Economic development.* The application may contain a plan for economic development activities under the program. The application shall demonstrate that there is a direct relationship between any proposed economic development activities under sections 405(b)(14) (i) and (ii) and the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline for submission set forth in the NOFA to determine whether it is complete, is internally consistent, contains correct computations, and is feasible. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or correct material no later than close-of-business of the appropriate HUD office on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD shall not extend this deadline for actual receipt of the material for any reason.

(2) The purpose of this procedure is to increase the number of approvable applications so eligible families will have the best opportunities to become homeowners at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies.

#### Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that

fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in section 415(b)(12)(i) can be met and the plan for continued affordability in section 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b)(1) The proposed program may not result in appreciably reducing in the locality the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the property or to families who would be eligible to reside in the property.

(2) Any application that HUD determines contains a feasible replacement housing plan meets this threshold criterion.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The eligible property specified in the application shall be located within the boundaries of a jurisdiction—

(1) Which is participating jurisdiction under the HOME program established under title II of the Cranston-Gonzalez National Affordable Housing Act; or

(2) On behalf of which the agency responsible for affordable housing has submitted a housing strategy or plan.

(f) The proposed program provides that at least 66 percent of units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

(g) The proposed costs of eligible activities are within applicable cost limitations.

#### Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet threshold requirements and assign it

points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or by an explanation of how such capability will be obtained—5 points.

(ii) The applicant has direct experience in working with or representing residents of public or Indian housing developments—5 points.

(iii) If rehabilitation is proposed, the capability of the applicant to manage the proposed rehabilitation, demonstrated through previous experience in managing rehabilitation or construction or by an explanation of how such capability will be obtained—5 points.

(iv) If rehabilitation is proposed, the extent to which an established resident-based organization will undertake substantial program management responsibilities in implementing the proposed homeownership program—5 points. If rehabilitation is not being proposed, no points shall be assigned for subcriteria (iii) and (iv) and the points for subcriteria (i) and (ii) shall be doubled.

Maximum points for this criterion (1): 20 points.

(2) *Local support.* HUD shall assign points for this criterion based on the extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program, considering the extent to which the additional improvements, amenities, and services enhance the homeownership program.

Maximum points for this criterion (2): 5 points.

(3) *Resident and homebuyer interest and marketability.* The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) 75 percent or more of the residents are interested: 10 points;

(B) 50–74.99 percent of the residents are interested: 5 points; or

(C) Less than 50 percent of the residents interested: 0 points.

(ii) Where the development is 50 percent or more vacant, HUD shall assign points based on the number of eligible families residing in other developments of the PHA/IHA who are interested in becoming homeowners under the program. The purpose of the survey is to determine if there is a sufficient pool of families in other developments eligible to purchase units in the proposed eligible property.

(A) If there are 1.5 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 10 points;

(B) If there are 1.2–1.49 interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 5 points.

(C) If there are less than 1.2 eligible families: 0 points.

(iii) Where the applicant is an RMC or RC, HUD shall assign an additional 5 points.

Maximum points for this criterion (3): 15 points.

(4) *Quality and feasibility of program.* The quality and feasibility of the proposed homeownership program, including the viability of the economic self-sufficiency plan. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—5 points.

(ii) The extent to which the applicant (or other appropriate entity identified in the application) is currently implementing effective homebuyer screening procedures, homebuyer supportive services, and other management practices intended to eliminate delinquencies in rent payments or foreclosures, or the extent to which the plan covering these activities contained in the application will be successful—5 points.

(iii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—10 points.

Maximum points for this criterion (4): 20 points.

(5) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction within which the eligible property is located includes the proposed

homeownership program as one of the general priorities identified pursuant to section 105(b)(7) of the Cranston-Gonzalez National Affordable Housing Act, or the proposed program is consistent with the tribal plan. Where a CHAS applies, the program shall qualify for points under this criterion if use of the development for homeownership is explicitly identified, if public or Indian housing homeownership is mentioned, or if low-income homeownership is mentioned.

Points for this criterion (5): 5 points.

(6) *Efficient use of grant.* The extent to which the proposed program will result in the lowest total cost per unit, taking into account the number of non-purchasing residents in the property and the need to use the implementation grant to fund the replacement housing plan.

Maximum points for this criterion (6): 10 points.

(7) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to family life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated; and

(iii) Whether the structure type and bedroom configuration is (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program, taking into account that no residents in occupancy on the date HUD approves an implementation grant may be evicted by reason of a homeownership program.

The purpose of this criterion is to assure that properties in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (7): 20 points.

(8) *MBE/WBE goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses. For example, the applicant has used such businesses

in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (8)(i) or (ii), as applicable: 5 points.

Total number of points—100 points.

(b) *Environmental review.* (1) HUD shall conduct an environmental review of the applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the

information revealed during the environmental review.

(c) *Ranking and selection to assure national geographic diversity.* (1) After assigning points to each application under paragraph (a), HUD shall rank the applications in order. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then identify for selection the highest ranking application from each of the four Census regions. HUD shall then select the highest ranking remaining applications, without regard to their location.

(2) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(3) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraphs (f) and (g).

(d) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested where it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program. In addition, before HUD may notify an applicant of selection, it shall certify that the amount of the grant being approved is not more than necessary to provide affordable housing, as required by section 102(d) of the HUD Reform Act. HUD shall make the certification in accordance with 24 CFR part 12. HUD expects the requirements of part 12 to go into effect before the deadline that will be established for the submission of HOPE grant applications.

(e) *Notification of approval or disapproval.* (1) *Notification of applicants.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application,

HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount. HUD's notification to the applicant of the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant by the deadline specified in the notification.

(2) *Conditional approval of section 8 applications.* HUD may approve the HOPE grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 1 program for nonpurchasing residents or for replacement housing.

(f) *Use of remaining amounts to fund HOPE 1 planning grant.* Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund any unfunded, approvable planning grant applications.

(g) *Insufficient approvable applications.* If funds remain after HUD approves all approvable applications, including planning grants, as provided in this notice, HUD may invite additional applications for implementation grants or invite applicants who submitted applications that could not be funded to submit amended implementation grant applications within a deadline specified in the invitation, subject to the limitations specified in section 415(c). Any remaining amounts shall be added to amounts available for subsequent funding rounds.

#### V. Other Requirements

Section 501. Flood Insurance and Coastal Barriers Resources Act.

(a) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barrier Resources System.

Section 505. Nondiscrimination and equal opportunity.

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 55 FR 24752-53 and 24755 (June 18, 1990), revising 24 CFR 905.165

(a) and (b) and § 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act [see 55 FR 24754 and 24755 (June 18, 1990), revising 24 CFR 905.170(b) and § 905.360].

(d) *Minority and women's business enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(e) *Affirmative fair housing marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2).

(f) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 309 of the United States Housing Act of 1937, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

The policies, guidelines, and requirements of OMB Circular Nos. A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Circular Nos. A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Recipients are

also subject to the audit requirements of OMB Circular A-128 implemented at 24 CFR part 44, and OMB Circular A-133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A-110 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or

has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in this paragraph;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

#### Section 535. Labor standards.

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determined prevailing wage rates (or both) shall apply to activities under the HOPE 1 program. The wage rate requirements do not apply to individuals who perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved. In addition, if other Federal programs are used in connection with the HOPE 1 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization or CDBG program is used in connection with the program, the labor standards requirements of those programs would apply to the extent required by them.

#### Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

#### VI. Grant Agreement—Planning and Implementation Grants

##### Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. The grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, or to terminate the grant agreement, if HUD determines that the recipient is or is likely to fail to carry out the approved homeownership program in accordance with the terms of

the approved application and this notice, including failure to provide the contributions towards the match.

#### VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; family contribution; performance Standards; tax consequences.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with the regulations specified in section 415(b)(12)(i) if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

(d) HUD will consult with the Internal Revenue Service on the tax consequences to eligible families under the program, and advise recipients of the advice received.

Section 705. Resident selection procedures during rental phase (if any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are consistent with the public or Indian housing program and approved by HUD as consistent with the purpose of improving housing opportunities for low-income families. The policies shall provide that the recipient (or another appropriate entity)

(a) notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section 415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d)

verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the public housing or Indian housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

#### Section 710. Social Security Numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

#### Section 715. Timely homeownership.

(a) *Deadline for transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of reasonable period of time.* (1) Where applicable, the PHA/IHA shall transfer the property to the recipient (or other entity) within one year of the effective date of the implementation grant agreement. Where the development contains 50 units or fewer, transfer of ownership interests to eligible families within two years of the date the entity that acquires the development (or the effective date of the implementation grant agreement where the PHA/IHA is that entity) shall be considered reasonable. Where the development contains more than 50 units, transfer of ownership interests to eligible families within five years shall be considered reasonable.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated,

extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

#### (a) *In general—(1) Transfer permitted.*

(i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) and the requirement for the purchaser to execute a promissory note, if required under paragraph (b). See paragraph (b) for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i), an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient shall have the right to purchase the ownership interest in the unit for the amount specified in the firm contract.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory note required; determination of amount homeowners may retain from sales proceeds.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference between the fair market value

of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c).

(B) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c). Any excess is distributed as provided in paragraph (d).

(C) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by 1/168 of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(D) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying

off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years  $\times$  12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years  $\times$  12), 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Determination of equity interest of initial homeowner in property.* The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(1) The contribution to equity paid by the family (such as any down payment and any amount paid toward principal on a mortgage loan during the period of ownership).

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c) (1) and (2) (excluding the value of

any sweat equity or volunteer labor used to make improvements to the unit).

The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(d) *Use of amounts a family may not retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 1 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of proceeds from sales to eligible families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees

upon prevailing in any such judicial action.

Section 735. Displacement prohibited; protection of nonpurchasing residents.

(a) *Displacement prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of this paragraph may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation assistance for residents who elect to move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(3). For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident residing in an eligible property on the date HUD approved an application for an implementation grant decides not to purchase a unit, or is not

qualified to do so under the terms of the approved homeownership program, the recipient shall, during the term of any operating assistance under the implementation grant, permit each otherwise qualified resident to elect to continue to reside in the project at rents that do not exceed levels determined under 24 CFR part 913 or, for Indian housing developments, part 905.

(3) If an otherwise qualified resident chooses to move (at any time during the term of the operating assistance contract), the PHA/IHA shall, if possible, offer the resident (i) a unit in another public or Indian housing development, or (ii) a section 8 certificate or voucher for use in other housing, without regard to otherwise applicable Federal or PHA/IHA preferences.

(d) *Other rights.* Tenants residing in a unit in a public or Indian housing development transferred under this notice shall have all rights provided to tenants of public or Indian housing under the 1937 Act.

(e) *Notice of relocation assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

#### VIII. Records, Reports, and Audit of Recipients

##### Section 801. Recordkeeping.

(a) *General records.* Each recipient shall keep records that will facilitate an effective audit and that fully disclose—

(1) the amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) the amount and disposition of proceeds from financing obtained in

connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) the total cost of the homeownership program;

(4) the amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) the cost or other value of all in-kind contributions toward the match required by section 410; and

(6) any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family size and income and racial, ethnic, and gender data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and condominium agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts available for reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under section 720(d) and section 725.

##### Section 805. Reports.

The recipient shall submit reports required by HUD.

##### Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any

duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by section 801.

#### IX. Waiver Authority

##### Section 901. Waiver authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of applications (including receipt of any modifications to applications). Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Public and Indian Housing. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a section 8 regulation is requested for the HOPE 1 program, it may be waived by the Assistant Secretary for Housing. The Secretary periodically will publish notice of granted waivers in the *Federal Register*. HUD may change submission deadlines established by this notice by subsequent notice published in the *Federal Register*.

#### X. Other Matters

##### Information Collections

HUD has submitted the collection of information requirements for this program to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

| Description              | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total  |
|--------------------------|--------------------|---------------------------------|------------------------|--------------------|--------|
| Applications:            |                    |                                 |                        |                    |        |
| Section 310.....         | 100                | 1                               | 100                    | 40                 | 4,000  |
| Section 415.....         | 100                | 1                               | 100                    | 80                 | 8,000  |
| Recordkeeping:           |                    |                                 |                        |                    |        |
| Section 801 and 805..... | 100                | 1                               | 100                    | 44                 | 4,400  |
|                          |                    |                                 |                        |                    | 16,400 |

#### Impact on the Economy

These guidelines would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An

analysis of the guidelines indicates that it would, as defined by that order, have (1) an annual effect on the economy of \$100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions.

Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of

Housing and Urban Development, 451 7th St. SW., Washington, DC 20410.

#### Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St. SW., Washington, DC 20410.

#### Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in these guidelines will have a potential significant impact on the formation,

maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

#### Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal

Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

#### Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that these guidelines would not have a significant economic impact on a substantial number of small entities. They would govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Dated: January 28, 1991.

**Jack Kemp,**

Secretary.

[FR Doc. 91-2404 Filed 2-1-91; 8:45 am]

BILLING CODE 4210-32-M

# Federal Register

Monday  
February 4, 1991

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## Part IX

### Department of Housing and Urban Development

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Office of the Secretary

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24 CFR Subtitle A  
HOPE for Homeownership of Multifamily  
Units Program; Notice of Program  
Guidelines

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Subtitle A**

[Docket No. N-91-3198; FR-2967-N-01]

**HOPE for Homeownership of  
Multifamily Units Program; Notice of  
Program Guidelines**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of program guidelines under 42 U.S.C. 12898.

**SUMMARY:** This notice announces HUD's guidelines, for immediate effect, for the operation of the HOPE for Homeownership of Multifamily Units program (HOPE 2) that provides for homeownership by low-income families. Elsewhere in today's issue of the *Federal Register*, HUD is publishing notices to implement the other two HOPE Grant programs.

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Single Family Homes (HOPE 3). The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625), enacted November 28, 1990. HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

While the three notices for the HOPE programs are similar in many respects, there are differences HUD has determined to be appropriate due to differences in what types of property are eligible, who may apply for grants, and other program features. HUD specifically invites comments on differences among the programs and whether the differences increase efficient administration of the programs, as well as suggestions for additional differences or elimination of differences among the programs. These comments will be taken into consideration, along with others requested below, in developing the final rules for the programs.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 2 program will be the development of resident-based organizations that will have central responsibilities for the programs.

The authorizing legislation provides for implementation by publication of a notice for effect. HUD invites public comment on this notice of program guidelines and will consider the comments in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months of the date the

Notice of Funding Availability (NOFA) for the HOPE program is published.

When Congress appropriates funds for this program, HUD will publish a NOFA advising potential applicants how to obtain an application packet and establishing deadlines and other requirements for submission of applications.

**DATES:** *Effective date:* February 4, 1991.

*Comment due date:* May 6, 1991.

Those sections of these Guidelines that contain information collection requirements (sections 310, 415, 801, and 805) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by HUD in the *Federal Register*.

**ADDRESSES:** Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections 310, 415, 801, and 805 should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20303, attention: Wendy Sherwin, Desk Officer for HUD.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is 202-708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202-708-2084 or, for persons who are hearing- or speech-impaired, TDD 202-708-3258).

**FOR FURTHER INFORMATION CONTACT:** Lawrence Goldberger, Office of Housing, room 6130, 202-708-0720. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by

dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

A potential applicant may submit a written request to the person specified immediately above, requesting that its name be placed on a mailing list for the receipt of application packets that will be mailed after publication of the NOFA.

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for expedited review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the *Federal Register*.

The annual public reporting burden for the collection of information collection requirements contained in this notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under Part X, Other Matters. Comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent by March 6, 1991, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, attention: Wendy Sherwin, Desk Officer for HUD. At the end of the public comment period on this notice, the Department may amend the information collection requirements set out in this notice to reflect public comments or OMB comments received concerning the information collections.

**Editorial Note:** These program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

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## Program Guidelines

## I. Purpose; Summary; and Relationship to Other Programs

## Section 101. Purpose.

The purpose of the HOPE 2 program is to provide homeownership opportunities for eligible families in certain multifamily developments.

## Section 105. Summary.

Under the HOPE 2 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient will use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and

homebuyers, activities necessary for the development of a home ownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved homeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one notification of funding availability. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched from non-Federal sources. (Indian tribes and certain IHAs may be exempt; see section 410(d).) Units must meet specified quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

Section 110. Relationship to other programs.

(a) *Waiver of section 8 regulations.* HUD may make section 8 authority available for use in support of the HOPE 2 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families. Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the section 8 Certificate and Housing Voucher programs.

HUD will soon publish a final rule amending 24 CFR part 791, which governs the allocation of housing assistance under the section 8 and certain other programs, to take into account changes made by the Department of Housing and Urban Development Reform Act of 1989. At that time, HUD will also amend part 791 to permit HUD to set aside section 8 authority for use in connection with the program.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8

assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers by very low-income families. (Section 413(a) of the Cranston-Gonzalez National Affordable Housing Act amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation, and invites public comment.

(b) *Inapplicability of other acts.* Eligible property under HOPE 2 is not subject to: (1) The Low-Income Housing Preservation and Resident Homeownership Act of 1990, or (2) the requirements of section 203 of the Housing and Community Development Amendments of 1978 applicable to the sale of developments either at foreclosure or after acquisition by HUD.

(c) *Reservation of section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance, to the extent necessary to provide rental assistance for a nonpurchasing resident who resides in an eligible property on the date HUD approves an implementation grant, for use by the resident elsewhere. In addition, subject to the availability of appropriations, HUD shall ensure that section 8 rental assistance is made available to nonpurchasing residents for use in the eligible property or elsewhere. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 2 program. See paragraph (a) for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(d) *Termination of section 8 and other rental assistance.* Project-based section 8 and other rental assistance shall be

terminated: (1) On the date an eligible property is transferred under the HOPE 2 program to an entity for transfer to eligible families or (2) if no transfer is proposed because the applicant or other entity already owns the property, on the effective date of an implementation grant agreement. The implementation grant may be used to cover any shortfall in operating income during the rental phase and after acquisition by eligible families.

(e) *Variations to FHA single family mortgage insurance programs.* All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in this paragraph.

(1) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 2 program may provide the down payment for the eligible family/mortgagor, section 429 of the Cranston-Gonzalez National Affordable Housing Act amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) are being amended by an interim rule published elsewhere in today's edition of the **Federal Register**. These amendments provide that a mortgagor being assisted in the purchase of a housing unit by Cranston-Gonzalez National Affordable Housing Act may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

(2) The FHA regulations are being amended as follows:

(i) Section 203.19(b)—by inserting the following language after the "Housing Act of 1961": "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(ii) Section 203.32(b)—by inserting after "instrumentality" the following: ", or entity designated in the homeownership plan submitted by an

applicant for an implementation grant under the Homeownership and Opportunity Through HOPE Act."

(iii) Section 234.28(c)—by inserting after "as of the date the mortgage is accepted for insurance" the following: "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(iv) Section 234.55(b)—by inserting after "instrumentality" the following: ", or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

## II. Definitions

**1937 Act.** The United States Housing Act of 1937.

**Administrative costs.** Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A-87 or A-122, as applicable, incurred by a recipient in carrying out a homeownership program under this notice. Administrative costs do not include the costs of activities which are separately eligible under section 405 or section 410.

**Applicant.** For HOPE 2, the following entities that may represent the residents of the eligible property:

- (a) An RMC (resident management corporation).
- (b) An RC (resident council).
- (c) A cooperative association.
- (d) A public or private nonprofit organization.
- (e) A public body, including an agency or instrumentality thereof.
- (f) A PHA (public housing agency).
- (g) An IHA (Indian housing authority).

**Census region.** One of the four regions defined by the Bureau of the Census. HUD will identify the Census regions in the application packet.

**CHAS.** A comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act.

**Cooperative association.** An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

**Eligible family.** (a) A low-income family; or

(b) A family or individual who is a resident of the eligible property on the date HUD approves an implementation grant.

**Eligible property.** A multifamily rental property, containing five or more units, that is—

- (a) Owned by HUD;

(b) Financed by a loan or mortgage held by HUD or insured by HUD, including loans under the section 312 Rehabilitation Loan program, the section 202 program, and the FHA Multifamily Mortgage Insurance programs;

(c) Determined by HUD to have serious physical or financial problems under the terms of an insurance or loan program administered by HUD (in most cases, such properties will also be eligible under (b)); or

(d) Owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, or a State or local government.

**Homeownership program.** A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

**HUD.** The United States Department of Housing and Urban Development.

**IHA.** An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

**Low-income family.** A family or individual that qualifies as a low-income family under 24 CFR part 813. The Cranston-Gonzalez National Affordable Housing Act changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR part 813 defines the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

**Nonprofit organization.** Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

**Ownership interest.** Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest.

**PHA.** A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

**Private nonprofit organization.** A nonprofit organization that is privately controlled. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

**Public body.** Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of

1974; any public body or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 2 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

**RC.** A resident council, which means any incorporated non-profit organization or association that—

- (a) Is representative of the residents of the eligible property;
- (b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and
- (c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

**Recipient.** An applicant approved to receive a grant under this notice or such other entity specified in the approved application and approved by HUD that will assume the obligations of the recipient under this notice.

**RMC.** A resident management corporation that proposes to enter into, or enters into, a management contract with the owner for an eligible property and that—

- (a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;
- (b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;
- (c) Has an elected board of directors;
- (d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;
- (e) Provides that its voting members are residents of the eligible property it manages and will manage under a homeownership program and of any other property or public or Indian housing developments;
- (f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

### III. Planning Grants

#### Section 301. Planning grants.

(a) **General authority.** HUD will make HOPE 2 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one planning grant in each of the four Census regions. HUD anticipates funding on the basis of allocations to the 10 HUD Regions for future, larger funding rounds.

(b) **Planning grants.** (1) Applicants may request a full planning grant covering all necessary planning activities specified in § 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in sections 305 (a), (b), and (c). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(2) The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant. The maximum amount for a mini planning grant shall be \$100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than \$200,000 (or of more than \$100,000 in the case of mini planning grants) is required.

(3) Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has approved a mini planning grant for the proposed program).

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs, including—

(a) **Development of RMCs and RCs.** Development of RMCs and RCs in connection with a specific homeownership program, including activities such as— (1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specified in paragraphs (a)(1) through (4).

(b) **Training and technical assistance.** Training and technical assistance for applicants related to development of a specific homeownership program. This activity may cover such topics as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) **Feasibility studies.** Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) **Preliminary architectural and engineering work.** Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) **Counseling and training.** Resident and homebuyer counseling and training. This activity may cover such topics as the various ways to become a homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) **Economic development.** (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency

of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that there is a direct relationship between the proposed activities and the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed \$250,000 for any single homeownership program.

(g) *Security plans.* Development of security plans.

(h) *Appraisal.* Cost of appraisals related to the program.

(i) *Application for implementation grant.* Preparation of an application for an implementation grant under this notice.

(j) *Other activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

#### Section 310. Applications for Planning Grants

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA to be published by HUD when funds become available. HUD will not accept any applications until after publication of the NOFA. The NOFA will advise potential applicants how to obtain an application packet and establish deadlines and other requirements for submission of applications.

(b) *Application contents.* Each application shall contain the information required by the application packet, which shall include at least the following items.

(1) *Request for planning grant.* (i)(A) The application shall contain a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding \$200,000 if the development has 250 or fewer units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed program will cover all eligible activities necessary to make the proposed program feasible, whether or not the application requests HUD funding for each activity.

(2) *Qualifications and experience of applicant.* The application shall describe the applicant and contain a statement of

its qualifications. HUD encourages two or more entities to submit applications together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(3) *Eligible property.* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application packet. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS certification.* The application shall contain a certification by the public official who submits the CHAS that—

(i) The proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located; or

(ii) For an application submitted on or before November 27, 1991, for an eligible property that is not within the jurisdiction of a State or unit of general local government that has an approved CHAS, the application is consistent with an existing State or local housing plan or strategy, as HUD determines to be appropriate, which may include a housing assistance plan under the Community Development Block Grant program.

This paragraph shall not apply to an application submitted by an IHA. IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(5) *Equal opportunity certifications.*

(i)(A) The application shall contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in section

505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Statement of interest in making property available.* The application shall contain a signed statement from the owner of the eligible property (including a statement from the appropriate HUD or other government official where the property is owned or held by a governmental entity) that it is interested in selling the property for homeownership under the HOPE 2 program and it will not sell to anyone else for a reasonable period of time to give a reasonable opportunity to the applicant to apply for an implementation grant and to HUD to review and approve or disapprove it and, if approved, execute the grant agreement.

(7) *Resident interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a board resolution from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. In all cases, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application packet.

(8) *Disclosures required by Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101-235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information

to be required by 24 CFR part 12, the regulation that will implement section 102 of the Reform Act. HUD expects the requirements of part 12 to go into effect before the deadline that will be established for the submission of applications.

(9) *Other requirements.* The application shall contain certifications and other information required under Part V, Other Requirements.

(c) *Screening.* (1) HUD shall screen each submitted application to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or corrected material no later than close-of-business of the appropriate HUD office on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of this paragraph, initially or after the opportunity to submit additional or corrected material.

(2) The purpose of this procedure is to increase the number of approvable applications so eligible families will have the best opportunities to become homeowners at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications. HUD invites comments on this policy, including recommendations on whether it should be adopted or modified in the final regulations.

Section 315. Rating and ranking of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant in the following categories.

(i) Developing or managing multifamily housing, or both—10 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—10 points.

(iii) Organizing, developing, and training low-income neighborhood or low-income resident groups—10 points.

Maximum points for this criterion (1): 30 points.

(2) *Resident and Homebuyer Interest and Marketability.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) 75 percent or more of the residents interested: 10 points; or

(B) 50-74.99 percent of the residents interested: 5 points;

(C) less than 50 percent of the residents interested: 0 points.

and

(ii)(A) 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 10 points;

(B) 50-74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 5 points; or

(C) Less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii) (A) and (B) shall be doubled and no points shall be assigned for categories (i) (A) and (B).

Maximum points for this criterion (2): 20 points.

(3) *Suitability of the property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to family life; substandard dwellings or other undesirable elements affecting the eligible property must not predominate, unless the undesirable conditions are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration is (or has the potential, through rehabilitation, to become) appropriate for the proposed homeownership program.—4 points.

The purpose of this criterion is to assure that properties in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (3): 20 points.

(4) *Local support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program—10 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program—10 points.

The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 20 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit, the greater the efficiency.

Maximum points for this criterion (5): 10 points. Total number of points: 100 points.

(b) *Ranking, selection, and notification.*

In deciding which applications to select for funding, HUD shall rank all HOPE 2 applications for planning grants and applications for HOPE 2 implementation grants together. See

section 425 for the applicable rating, ranking, and selection procedures.

(c) *Inapplicability of Environmental Review Requirements.* HUD has determined that an environmental review of applications for planning grants is not required because planning grants involve no rehabilitation and little or no physical change and because, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD intends to exempt planning grant applications from environmental review by issuing a final rule amending 24 CFR part 50 at the time the final rule for the HOPE programs is issued. HUD is in the process of consulting with the Council on Environmental Quality on this matter. CEQ regulations require this consultation before an agency may issue an amendment to its environmental regulations. While HUD will carefully consider environmental concerns in assigning points for suitability of the property at the planning grant stage, the environmental review at the implementation grant stage may nevertheless result in disapproval.

#### IV. Implementation Grants

##### Section 401. Implementation grants.

(a) *Implementation grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *National competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each of the four Census regions. HUD anticipates funding on the basis of allocations to the 10 HUD Regions for future, larger funding rounds.

(c) *Overall limitation on grant amount.* The amount requested for an implementation grant for each unit may not exceed the present value of the total of the projected published fair market rents for existing housing established by HUD under section 8(c) of the 1937 Act for the next 10 years.

##### Section 405. Eligible implementation grant activities.

(a) *Cost limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs.

(b) *Eligible activities.* Eligible activities include—

(1) *Architectural and engineering work.* Architectural and engineering

work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of homeownership program—(i) General.* Implementation of the homeownership program, including—

(A) Acquisition of the eligible property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this notice (where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program funds may not be used for acquisition of the property for the program);

(B) The provisions of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum acquisition costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) The applicant may acquire an eligible property where the debt exceeds the fair market value only if the excess will not be the responsibility of the recipient or homeowners. The excess debt may not be counted towards the match.

(C) For example, —

(1) If the proposed acquisition cost (including debt) is \$2 million and the appraised value is \$2 million, up to \$2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition.

(2) If the proposed acquisition cost (including debt) is \$2 million and the appraised value is \$2.25 million, up to \$2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition, and HUD will count \$250,000 of excess value towards the match.

(3) If the proposed acquisition cost (including debt) is \$2.25 million and the appraised value is \$2 million, up to \$2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition. The application would have to demonstrate how the excess cost of \$250,000 will be

supported by the program (other than by the recipient or the homeowners). The \$250,000 could not be counted towards the match.

(iii) *Maximum cost of acquisition and rehabilitation.* The maximum cost of acquisition and rehabilitation shall be the lower of (A) the as-is fair market value of the property (see paragraph (b)(2)(ii)), plus the actual cost of rehabilitation or (B) the applicable maximum dollar limitation (including any high-cost area adjustments) that applies to property refinanced and rehabilitated pursuant to section 223(f) of the National Housing Act, which shall be included in the application packet or otherwise provided by HUD.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) for applicable cost limitations covering both acquisition and rehabilitation). The property shall be rehabilitated (including the provisions of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is prohibited. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The cost of the rehabilitation shall be reasonable and in accordance with the requirements of paragraph (b)(2)(iii) and other applicable requirements under this notice.

(4) *Administrative costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See section 305(a) for examples of eligible activities.

(6) *Counseling and training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Assistance for operating expenses.* (i) Funding of operating expenses for the property, to the extent necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property by the applicant (or after the effective date of the implementation grant if the recipient or other entity that will transfer the property to eligible families already owns the property). Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property but for whom section 8 assistance is not available, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and

the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the applicant or other entity acquires the eligible property (or, if the applicant or other entity already owns the property, from the effective date of the implementation grant agreement). If HUD determines that extraordinary circumstances exist, as demonstrated in the application or at the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year terms, subject to the availability of appropriations. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications which propose operating assistance for five years or less will be at a competitive advantage.

(iv) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Legal fees.* Customary and reasonable costs of professional legal services.

(12) *Ongoing training needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(13) *Economic development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to

work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and homeowners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the eligible property covered by the homeownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed \$250,000.

(14) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them.

#### Section 410. Matching Requirements

(a) *Requirement for each recipient to match the HUD grant.* (1) Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount of the match.

(2) Contributions for eligible administrative costs may be recognized for matching purposes only up to an amount equal to 7 percent of the amount of the implementation grant (excluding any grant amounts proposed for operating assistance). (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).)

(3) For example, if the grant amount is \$600,000 (excluding any grant amounts proposed for operating assistance), the recipient must assure the provision of at least \$200,000 (33 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed \$42,000 (7 percent of the grant amount of \$600,000). In addition, assuming contributions of \$42,000 for administrative costs, the applicant must

provide contributions covering the remaining \$158,000 (\$200,000-\$42,000) required for the match from non-Federal sources. Although an applicant can spend more than this on administrative costs, it may not be counted towards the match.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash contributions from non-Federal resources.* Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (b)(2). Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(2) *Administrative costs.* Payment of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act.

(3) *Taxes, fees, and other charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if no acquisition is necessary) may be counted towards the match. For example, if a city agrees to forego real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, foregone, or deferred for longer than 20

years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under this paragraph (b)(3), the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land of other real property.* Real property contributed for use under an approved homeownership program. The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. For eligible property, the fair market value shall be determined in accordance with section 405(b)(2)(ii).

(5) *Infrastructure.* The fair market value of investment in on-site and off-site infrastructure required for a homeownership program. Only expenditures for capital improvements made after the date of notification by HUD of implementation grant approval that are for physical improvements directly related to and necessary for the homeownership program may be counted towards the match. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match. HUD specifically invites comments on what investment in infrastructure should count and how to value it.

(6) *Debt forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding the fair market value of a property under the program, determined under section 405(b)(2)(ii) or paragraph (b)(4), may not be counted towards the match.

(7) *Other in-kind contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program,

(B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at \$5 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations.

(c) *Other Restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA to be published by HUD when funds become available. HUD will not accept any applications until after publication of the NOFA. The NOFA will advise potential applicants how to obtain an application packet and establish deadlines and other requirements for submission of applications.

(b) *Application contents.* Each application shall contain the information

required by the application packet, which shall include at least the following items.

(1) *Request for HOPE grant.* (i) The application shall contain a request for an implementation grant; (ii) a description of the personnel necessary to complete the activities; (iii) the amount of the grant requested for each activity; and (iv) a summary description of the proposed homeownership program. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligibility property for assistance under section 8 of the 1937 Act, specifying the period during which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed for nonpurchasing residents for use in the eligible or another property, or both.

(3) *Qualifications and experience of applicants.* The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(4) *Description of proposed homeownership program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application packet (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families.

(5) *Plan—(i) Identifying and selecting families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership;

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS;

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so;

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence;

(E) Require each eligible family to agree not to lease or otherwise make the property available for occupancy by other residents during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation;

(F) Require any eligible family that violates the agreement made under paragraph (E) to pay the amount then due under the promissory note; and

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, and other available resources (including, for example, section 8 assistance).

(iii) *Managing sweat equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing ongoing training and counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a listing of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of an eligible property shall involve acquisition and rehabilitation of all of the units in the property. HUD may permit acquisition or rehabilitation of less than the whole property if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the property is feasible and will not result in a hardship to the residents of the property who are not included in the homeownership program.

(iii) The application shall include evidence that the applicant has control

of the property. Acceptable evidence includes a copy of the executed contract of sale, option agreement, or deed, or other proof of ownership. In the case of applications for property owned by a Federal, State, or local government, acceptable evidence includes a commitment to convey the property and a demonstration that any official action which is necessary to convey the property to the applicant has been taken, or will be taken, before the date estimated in the NOFA for notification of selection. Options or other commitments may be contingent upon award of funding under the program. Options or other commitments shall extend for at least a 12-month period from the deadline for submission of applications specified in the NOFA (to provide time necessary to review and select applications and execute grant agreements).

(7) *Housing quality standards plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the standards applicable to projects refinanced pursuant to section 223(f) of the National Housing Act.

(8) *Economic development.* The application may contain a plan for economic development activities under the program. The application shall demonstrate that there is a direct relationship between any proposed economic development activities under sections 405(13) (i) and (ii) and the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(9) *Match requirements.* The application shall describe, and include commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable

evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. The applicant should submit a document evidencing a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(10) *Disclosure under Reform Act.* Section 102(b) of the HUD Reform Act, Public law 101-235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information to be required by 24 CFR part 12, the regulation that will implement section 102 of the Reform Act. HUD expects the requirements of part 12 to go into effect before the deadline that will be established for the submission of applications.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (1) of the property, where applicable, by the applicant or other entity, including an RC, for transfer to eligible families, and (2) by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit. Financing may not include assumption of a mortgage where low-income use restrictions would continue to apply.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy by low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(vi) (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(D) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7)) or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

(v) Recipients and homeowners continue to be subject to paragraphs (b)(11)(iv) (A) through (D) during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability—(i) Initial affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the 30 percent limitation in paragraph (b)(12)(i), plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall not exceed 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. The applicant may request HUD to approve a higher percentage

cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under this paragraph (b)(12).

(ii) *Continued affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii). The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma.* The plan shall include a "proforma" that sets forth estimated project costs and income over a 20-year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the applicant or other entity already owns the property). The proforma shall be prepared in accordance with the following requirements and guidelines:

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraph (b)(12)(i) (A) and (B).

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of

homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD in the NOFA.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of section 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement reserves.* The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas), and (D) other possible replacement needs. The amount of the reserve shall be \$1,000 per unit or such higher amount proposed by the applicant and approved by HUD.

(13) *Sales price to applicant or other entity.* The application shall specify the proposed sales price, the basis for the price determination, and terms of the proposed sale to the entity, if any, that will purchase the property for resale to eligible families.

(14) *Sales prices and terms of sale to eligible families; form of ownership.* (i) The application shall include an estimate of the sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing.

(iii) An applicant may permit a family to meet its down payment obligation through "sweat equity" performed before closing.

(iv) See section 110(e) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale restrictions, if any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract.

(17) *CHAS certification.* The application shall contain a certification by the public official who submits the CHAS that—

(i) The proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located; or

(ii) For an application submitted on or before November 27, 1991 for an eligible property that is not within the jurisdiction of a State or unit of general local government that has an approved CHAS, the application is consistent with an existing State or local housing plan or strategy, as HUD determines to be appropriate, which may include a housing assistance plan under the Community Development Block Grant program.

This paragraph shall not apply to an application submitted by an IHA. IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(18) *Equal opportunity certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 et

seq.), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a certification from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application packet.

(20) *Plan for use of certain program income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(21) *Nondisplacement; participation by residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline for submission set forth in the NOFA to determine whether it is complete, is internally consistent, contains correct computations, and is feasible. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its

application. However, the applicant may not substantially revise the application, such as by substituting another eligible property, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or correct material no later than close of business of the appropriate HUD office on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD shall not extend this deadline for actual receipt of the material for any reason.

(2) The purpose of this procedure is to increase the number of approvable applications so eligible families will have the best opportunities to become homeowners at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies.

#### Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in section 415(b)(12)(i) can be met and the plan for continued affordability in § 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b)(1) The proposed program may not result in appreciably reducing in the locality the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the property or to families who would be eligible to reside in the property.

(2) HUD shall determine whether the application complies with this criterion, based on a determination that no more than 5 percent of the affordable rental housing units in the locality would be converted to homeownership. If the proposed eligible property is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units in the eligible property may exceed

the 5 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The proposed program provides that at least 66 percent of units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

(f) Where the vacancy rate for the eligible property is less than 50 percent, at least 50 percent of the residents are interested in becoming homeowners.

(g) The proposed costs of eligible activities are within applicable cost limitations.

(h) An assessment of the proposed eligible property, based on the criterion for rating the suitability of property, indicates that the property is suitable.

#### Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet the threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant in the following categories—

(i) Developing or managing multifamily housing, or both—5 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—5 points.

(iii) Organizing, developing, and training effective low-income neighborhood or low-income resident groups, or both—5 points.

Maximum points for this criterion (1): 15 points.

(2) *Quality of the program.* In assigning points for this criterion, HUD

shall consider evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—5 points.

(ii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—5 points.

If economic development activities are not being proposed, no points shall be assigned under subcriteria (ii) and the maximum points assigned under subcriterion (i) shall be 10.

Maximum points for this criterion (2): 10 points.

(3) *Local support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program—5 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program—5 points.

The highest number of points shall be assigned based on the quality, expected duration, and size of support to the homeownership program.

Maximum points for this criterion (3): 10 points.

(4) *Resident and homebuyer interest.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) 75 percent or more of the residents interested: 5 points; or

(B) 50-74.99 percent of the residents interested: 3 points; and

(ii)(A) 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the units in the property are marketable: 5 points;

(B) 50-74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the

units in the property are marketable: 3 points; or

(C) Less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii)(A) and (B) shall be doubled and no points shall be assigned for categories (i)(A) and (B).

Maximum points for this criterion (4): 10 points.

(5) *Suitability of the property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to family life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration is (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program—4 points.

The purpose of this criterion is to assure that property in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (5): 20 points.

(6) *MBE/WBE goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and § 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points

for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6) (i) or (ii), as applicable: 5 points.

(7) *Feasibility and efficiency—(i) Feasibility.* The extent of readiness of the applicant to proceed with rehabilitation and the homeownership program, based on the level of completeness of the architectural exhibits and the cost estimates of the proposed rehabilitation. Applicants submitting final working drawings and specifications that are sufficient to permit the applicant to obtain bids for the work will receive maximum points.

Maximum points for this subcriterion: 10 points.

(ii) *Efficiency.* The efficiency of the applicant's use of HOPE grant funds, based on such factors as—

(A) The amount of the HOPE grant per unit, adjusted for high-cost areas;

(B) The availability of contributions towards the match (more points will be assigned for contributions proposed in cash and for relatively firmer commitments of cash and other contributions);

(C) The availability of contributions beyond those required by the match (more points will be assigned for contributions proposed in cash and for relatively firmer commitments of cash and other contributions);

(D) The per unit ratio of soft cost related to the rehabilitation to hard costs related to the rehabilitation (more points will be assigned for lower soft costs);

(E) Where the vacancy rate for the property is less than 50 percent, the ratio of the current annual resident contributions towards rent to the current annual operating expenses (excluding debt service) of the property (more points will be assigned where resident contributions cover a greater amount of operating expenses); and

(F) The amount of the HOPE grant per unit for non-acquisition and non-rehabilitation costs, adjusted for high-cost areas.

Maximum points for this subcriterion (ii): 20 points.

Maximum points for this criterion (7): 30 points.

Total points—100 points.

(b) *Environmental review.* (1) HUD shall conduct an environmental review

of the implementation grant applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each implementation grant application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and selection to assure national geographic diversity.* (1) After assigning points to each application under paragraph (a), HUD shall rank the planning grant applications rated under section 315 and the implementation grant applications rated under paragraph (a) in one combined list. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then identify for selection the highest ranking application of each type (planning grant and implementation grant) from each of the four Census regions. HUD shall then select the highest ranking remaining applications, without regard to their location or their type.

(2) If two or more applications have the same number of points, the application with the most points for feasibility and efficiency (in the case of implementation grants) or capability (in the case of planning grants) shall be selected. If there is still a tie, the

application with the most points for suitability of property shall be selected.

(3) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD may determine whether funding a lower grant amount is feasible. Alternatively, HUD may skip to the next highest ranking application or applications that can be funded with the remaining amount.

(d) *Reduction in requested grant amounts.* HUD shall approve a planning grant or an implementation grant application for an amount lower than the amount requested where it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program. In addition, before HUD may notify an applicant of selection for an implementation grant, it shall certify that the amount of the grant being approved is not more than necessary to provide affordable housing, as required by section 102(d) of the HUD Reform Act. HUD shall make the certification in accordance with 24 CFR part 12. HUD expects the requirements of part 12 to go into effect before the deadline that will be established for the submission of HOPE grant applications.

(e) *Notification of approval or disapproval—(1) Notification of applicants.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount. HUD's notification to the applicant of the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant by the deadline specified in the notification.

(2) *Conditional approval of section 8 applications.* HUD may approve the HOPE implementation grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 2 program for nonpurchasing residents.

(f) *Insufficient approvable applications.* If funds remain after HUD approves all approvable applications, as provided in this notice, HUD may invite

additional applications for planning or implementation grants, or both, or invite applicants who submitted applications that could not be funded to submit amended applications within a deadline specified in the invitation, subject to the limitations specified in section 415(c).

#### V. Other Requirements

##### Section 501. Flood insurance and Coastal Barriers Resources Act.

(a) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barriers Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barriers Resources System.

##### Section 505. Nondiscrimination and Equal Opportunity.

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the

Fair Housing Act and their implementing regulations.

(b) *Discrimination of the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of the Indian tribes and IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 55 FR 24752-53 and 24755 (June 18, 1990), revising 24 CFR 905.165 (a) and (b) and § 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 55 FR 24754 and 24755 (June 18, 1990), revising 24 CFR 905.170(b) and § 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11825, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(e) *Affirmative fair housing marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2).

(f) *Authority for collection of racial, ethnic and gender data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 431 of the Cranston-Gonzalez National Affordable Housing Act, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

The policies, guidelines, and requirements of OMB Circular Nos. A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Circular Nos. A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A-128 implemented at 24 CFR part 44, and OMB Circular A-133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

Section 515. Drug-Free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants and recipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent

or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A-110 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in this paragraph;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

#### Section 535. Labor standards.

If other Federal programs are used in connection with the HOPE 2 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if CDBG assistance is used for the HOPE program, any labor standards requirements of that program would apply to the extent required by it.

#### Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

#### VI. Grant Agreement—Planning and Implementation Grants

##### Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. The grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, or to terminate the grant agreement, if HUD determines that the recipient is or is likely to fail to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contributions towards the match.

#### VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; family contribution; performance standards; tax consequences.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with the regulations specified in section 415(b)(12)(i) if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

(d) HUD will consult with the Internal Revenue Service on the tax consequences to eligible families under the program, and advise recipients of the advice received.

#### Section 705. Resident selection procedures during rental phase (if any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are approved by HUD as consistent with the purpose of improving housing opportunities for low-income

families. The policies shall provide that the recipient (or another appropriate entity): (a) Notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section 415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d) verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the assisted housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

#### Section 710. Social Security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

#### Section 715. Timely homeownership.

(a) *Deadline for transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of reasonable period of time.* (1) Except for eligible property already owned by the entity that will transfer to eligible families, the eligible property shall be acquired within one year of the effective date of the implementation grant agreement. Ownership interests in the units shall be transferred to eligible families within four years of the effective date.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

(a) *In general.*—(1) *Transfer permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) and the requirement for the purchaser to execute a promissory note, if required under paragraph (b). See paragraph (b) for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i), an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient shall have the right to purchase the ownership interest in the unit for the amount specified in the firm contract.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory note required; determination of amount homeowners may retain from sales proceeds.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c).

(B) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c). Any excess is distributed as provided in paragraph (d).

(C) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by  $\frac{1}{6}$  of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(D) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership),  $\frac{5}{6}$  (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the

promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years  $\times$  12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years  $\times$  12),  $\frac{72}{192}$  (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Determination of equity interest of initial homeowner in property.* The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales prices is sufficient, an initial homeowner recovers the equity interest in the property. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(1) The contribution to equity paid by the family (such as any down payment and any amount paid towards principal on a mortgage loan during the period of ownership);

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements,

including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c) (1) and (2) (excluding the value of any sweat equity or volunteer labor used to make improvements to the unit).

The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(d) *Use of amounts a family may not retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 2 program, subject to any limitations contained in appropriations Acts.

#### Section 725. Use of proceeds from sales to eligible families

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

#### Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors

in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

#### Section 735. Displacement prohibited; protection of nonpurchasing residents.

(a) *Displacement prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of this paragraph may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation assistance for residents who elect to move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(2). For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being

vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident living in an eligible property on the date HUD approves an application for an implementation grant is a low-income resident and decides not to purchase a unit, or is not qualified to do so under the terms of the approved homeownership program, HUD shall, subject to the availability of appropriations, ensure that the resident receives a section 8 certificate or voucher for use in that or another property.

(d) *Notice of relocation assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

#### VIII. Records, Reports, and Audit of Recipients

##### Section 801. Recordkeeping.

(a) *General records.* Each recipient shall keep records that will facilitate an effective audit and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family size and income and racial, ethnic, and gender data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and condominium agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts available for reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to

HUD under section 720(d) and section 725.

**Section 805. Reports.**

The recipient shall submit reports required by HUD.

**Section 810. Access by HUD and the Comptroller General.**

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by section 801.

**IX. Waiver Authority**

**Section 901. Waiver authority.**

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of applications (including receipt of any modifications to applications). Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Housing-Federal Housing Commissioner. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a CDBG

regulation is requested for the HOPE 2 program, it may be waived by the Assistant Secretary for Community Planning and Development. The Secretary periodically will publish notice of granted waivers in the **Federal Register**. HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

**X. Other Matters**

**Information Collections**

HUD has submitted the collection of information requirements for this program to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

| Description                      | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total         |
|----------------------------------|--------------------|---------------------------------|------------------------|--------------------|---------------|
| Applications:                    |                    |                                 |                        |                    |               |
| § 310.....                       | 100                | 1                               | 100                    | 40                 | 4,000         |
| § 315.....                       | 100                | 1                               | 100                    | 80                 | 8,000         |
| Recordkeeping: §§ 801 & 805..... | 60                 | 1                               | 60                     | 44                 | 2,640         |
| <b>Total.....</b>                |                    |                                 |                        |                    | <b>14,640</b> |

**Impact on the Economy**

These guidelines would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would, as defined by that order, have (a) an annual effect on the economy of \$100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410.

**Environmental Review**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30

p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St. SW., Washington, DC 20410.

**Impact on the Family**

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in these guidelines will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

**Federalism Impact**

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive

Order 12612, *Federalism*, that the provisions in these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

**Impact on Small Entities**

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that these guidelines would not have a significant economic impact on a substantial number of small entities. They would govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Dated: January 28, 1991.

**Jack Kemp,**  
Secretary.

[FR Doc. 91-2403 Filed 2-1-91; 8:45 am]

BILLING CODE 4210-32-M

# Federal Register

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Monday  
February 4, 1991

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## Part X

### Department of Housing and Urban Development

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Office of the Secretary

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24 CFR Subtitle A  
HOPE for Homeownership of Single  
Family Homes Program; Notice of  
Program Guidelines

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Subtitle A**

[Docket No. N-91-3200; FR-2968-N-01]

**HOPE for Homeownership of Single Family Homes Program; Notice of Program Guidelines**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of program guidelines under 42 U.S.C. 12898.

**SUMMARY:** This notice announces HUD's guidelines, for immediate effect, for the operation of the HOPE for Homeownership of Single Family Homes program (HOPE 3) that provides for homeownership by low-income families. Elsewhere in today's issue of the Federal Register, HUD is publishing notices to implement the other two HOPE Grant programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Multifamily Units (HOPE 2). The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

While the three notices for the HOPE programs are similar in many respects, there are differences HUD has determined to be appropriate due to differences in what types of property are eligible, who may apply for grants, and other program features. HUD specifically invites comments on differences among the programs and whether the differences increase efficient administration of the programs, as well as suggestions for additional differences or elimination of differences among the programs. These comments will be taken into consideration, along with others requested below, in developing the final rules for the programs.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals.

The authorizing legislation provides for implementation by publication of a notice for effect. HUD invites public comment on this notice of program guidelines and will consider the comments in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months of the date the Notification of Funding Availability (NOFA) for the HOPE program is published.

When Congress appropriates funds for this program, HUD will publish a NOFA advising potential applicants how to obtain an application packet and establishing deadlines and other requirements for submission of applications.

**DATES:** *Effective date:* February 4, 1991. *Comment due date:* May 6, 1991. Those sections of these Guidelines that contain information collection requirements (sections 415, 801, and 805) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of the fact has been published by HUD in the Federal Register.

**ADDRESSES:** Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections 415, 801, and 805 should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC, 20303, Attention: Wendy Sherwin, Desk Officer for HUD.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is 202-708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202-708-2084 or, for persons who are hearing- or speech-impaired, TDD 202-708-3258).

**FOR FURTHER INFORMATION CONTACT:** John Garrity, Office of Urban Rehabilitation, room 7158, 202-708-0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of

Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

A potential applicant may submit a written request to the person specified immediately above, requesting that its name be placed on a mailing list for the receipt of application packets that will be mailed after publication of the NOFA.

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for expedited review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the Federal Register.

The annual public reporting burden for the collection of information collection requirements contained in this notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, Other Matters. Comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent by March 6, 1991 to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Wendy Sherwin, Desk Officer for HUD. At the end of the public comment period on this notice, the Department may amend the information collection requirements set out in this notice to reflect public comments or OMB comments received concerning the information collections.

**Editorial Note:** These program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

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### Program Guidelines

#### *I. Purpose; Summary; and Relationship to Other Programs*

##### Section 101. Purpose.

The purpose of the HOPE 3 program is to provide homeownership opportunities for eligible families to purchase certain Federal, State, and local government-owned single family properties and units in scattered site, single family public and Indian housing developments.

##### Section 105. Summary.

Under the HOPE 3 program for FY 1991, HUD will make implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. For FY 1991, HUD will not be funding planning grants for HOPE 3. A recipient will use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, and cover other eligible program costs.

Each recipient is required to assure that the HOPE implementation grant is matched from non-Federal sources. (Indian tribes and certain IHAs may be exempt; see section 410(d).) Units must meet specified quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

##### Section 110. Relationship to other programs.

(a) *Applicability of section 18 of 1937 Act.* To the extent eligible property under the HOPE 3 program is a scattered site, single family public or Indian housing development, the requirements of section 18 of the 1937 Act, governing the demolition and disposition of public or Indian housing and requiring replacement of units demolished or disposed of, shall apply, except as provided in the following sentence. The application packet will provide guidance on the applicability of section 18 to eligible properties under other public or Indian housing homeownership programs (including the Turnkey III and the Mutual Help programs) which are proposed for conversion to the HOPE 3 program to enable families to acquire ownership interests in their units.

(b) *Termination of section 8 and other rental assistance.* Project-based section 8 and other rental assistance shall be

terminated before transfer of an ownership interest in an eligible property to an eligible family.

(c) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(d) *Continuation of annual contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under the HOPE 3 program, HUD shall continue to pay any annual contributions still payable, subject to section 5(a) of the 1937 Act.

(e) *Operating subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(f) *Variations to FHA single family mortgage insurance programs.* All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in this paragraph.

(1) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 3 program may provide the down payment for the eligible family/mortgagor, section 429 of the Cranston-Gonzales National Affordable Housing Act amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), §§ 203.32(b), 234.28(c) and 234.55(b) are being amended by an interim rule published elsewhere in today's edition of the *Federal Register*. These amendments provide that a mortgagor being assisted in the purchase of a housing unit by Cranston-Gonzales National Affordable Housing Act may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

(2) The FHA regulations are being amended as follows:

(i) Section 203.19(b)—by inserting the following language after the "Housing Act of 1961": "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(ii) Section 203.32(b)—by inserting after "instrumentality" the following: ", or entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity Through HOPE Act."

(iii) Section 234.28(c)—by inserting after "as of the date the mortgage is accepted for insurance" the following: "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

(iv) Section 234.55(b)—by inserting after "instrumentality" the following: ", or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act."

## II. Definitions

*1937 Act.* The United States Housing Act of 1937.

*Administrative costs.* Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A-87 or A-122, as applicable, incurred by a recipient in carrying out a homeownership program under this notice. Administrative costs do not include the costs of activities which are separately eligible under sections 405 or 410.

*Applicant.* A private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, and an agency or instrumentality of a public body) in cooperation with a private nonprofit organization.

*CHAS.* A comprehensive housing affordability strategy under section 105 of the Cranston-Gonzales National Affordable Housing Act.

*Cooperative association.* An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

*Displaced homemaker.* An individual who—

- (a) Is an adult;
- (b) Has not worked full-time full-year in the labor force for a number of years (at least two) but has, during such years, worked primarily without remuneration to care for the home and family; and

(c) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

*Eligible family.*

A low-income family who is a first-time homebuyer.

*Eligible property.*

A single family property, containing no more than four units, that is owned or held by HUD, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, a State or local government (including any in rem property), or a PHA/IHA. This definition includes scattered site single family public housing and properties held by institutions within the jurisdiction of the Resolution Trust Corporation. A cooperative or a condominium unit shall be located in a cooperative or condominium development containing no more than four units to qualify as eligible property under the HOPE 3 program. In the case of two- to four-unit property, only property that may be divided so each unit may be acquired by an eligible family is eligible. Only property that is debt free and has an otherwise clear title on the date it is acquired by the recipient or other entity for transfer to eligible families is eligible.

*First-time homebuyer.* An individual and his or her spouse (if any) who have not owned a home during the 3-year period before purchase of a home with assistance under the HOPE 3 program, except that—

(a) Any individual who is a displaced homemaker may not be excluded from consideration on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(b) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

*Homeownership program.* A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. All eligible properties shall be acquired by eligible families.

*HUD.* The United States Department of Housing and Urban Development.

*IHA.* An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

**Indian housing development.** An Indian public housing project under the 1937 Act.

**Low-income family.** A family or individual that qualifies as a low-income family under 24 CFR part 913 (where the recipient is a PHA/IHA, RMC), part 813 (unless the recipient is a PHA/IHA, RMC, or RC), or part 905 (for Indian housing), as appropriate. The Cranston-Gonzalez National Affordable Housing Act changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR part 913 defines the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

**Nonprofit organization.** Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

**Ownership interest.** Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest.

**PHA.** A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

**Private nonprofit organization.** A nonprofit organization that is privately controlled. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

**Public body.** Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public body or instrumentality of any of the foregoing jurisdiction which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 3 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

**Public housing development.** A public housing project under the 1937 Act.

**RC.** A resident council, which means any incorporated nonprofit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the

voting membership of which consists of residents of the property.

**Recipient.** An applicant approved to receive a grant under this notice or such other entity specified in the approved application and approved by HUD that will assume the obligations of the recipient under this notice.

**RMC.** A resident management corporation that proposes to enter into, or enters into, a management contract for eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

**Single parent.** An individual who—

(a) Is unmarried or legally separated from a spouse; and

(b)(1) has one or more minor children for whom the individual has custody or joint custody; or (2) is pregnant.

### III. Planning Grants—Reserved

In fiscal year 1991, HUD will not fund planning grants under the HOPE 3 program. HUD intends to fund HOPE 3 planning grants for fiscal year 1992, and invites comments on the appropriateness for HOPE 3 of the rules governing planning grants under the HOPE 1 and HOPE 2 programs. These comments will be considered in establishing any HOPE 3 planning grant rules as part of the final regulation.

### IV. Implementation Grants

Section 401. Implementation grants.

(a) **Implementation grants.** HUD shall make implementation grants to applicants for the purpose of carrying

out homeownership programs approved under this title.

(b) *National competition with regional allocation.* HUD shall allocate funding authority for each of the 10 HUD Regions by formula, based on three equally weighted factors—

(1) The number of rental units in the Region, as determined by the Bureau of the Census, occupied by persons with incomes at or below the poverty level (half of the weight for this factor), and the total number of renters in the Region (for the other half);

(2) The number of rental units in the Region that are unsuitable because they (i) lack or have incomplete plumbing; (ii) are occupied by residents who are paying more than 30 percent of adjusted income toward rent (including utilities); (iii) are occupied by an average of more than one person in the household per room; or (iv) lack or have incomplete kitchens; and

(3) The number of single family properties (with up to four units) in the Region owned by HUD, the Resolution Trust Corporation in its affordable housing inventory, or the Department of Veterans Affairs.

Paragraphs (b) (1) and (2) measure the need for the program and paragraph (b)(3) measures the supply of eligible property available for the program.

(c) *Overall limitations.* (1) HUD may approve more than one grant for a program to be carried out in a locality, so long as different applicants are the grantees and the programs will be carried out in different neighborhoods. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than \$1 million in any year in any one HUD Region, in order to give as many applicants as possible an opportunity to develop homeownership programs and to fund applicants in various areas of the country. HUD specifically invites public comment on the advisability of continuing to apply this \$1 million cap to future funding rounds.

(2) No amendments to increase previously approved grant amounts are allowed.

Section 405. Eligible implementation grant activities.

(a) *Cost limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs.

(b) *Eligible activities.* Eligible activities include—

(1) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans

or drawings, write-ups, specifications, or inspections.

(2) *Implementation of homeownership program.*

(i) *General.* Implementation of the homeownership program, including—

(A) Acquisition of the eligible property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this notice (where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program funds may not be used for acquisition of the property for the program);

(B) The provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum acquisition costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) Where the eligible property is a public or Indian housing development, the cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to waive this limitation to permit use of program funds to pay the PHA/IHA for the depreciated value of the amount of local tax revenues spent on such improvements. The request for the waiver shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(iii) *Maximum cost of acquisition and rehabilitation.* (A) The cost of acquisition and rehabilitation paid for from grant funds may not exceed 80 percent of the maximum amount that may be insured under section 203(b) of the National Housing Act (including any high-cost area adjustments), plus reasonable and customary closing costs charged for comparable transactions in the market area. (The cost of acquisition of a unit in a public or Indian housing

development is not an eligible cost.) The maximum cost of rehabilitation that may be paid for from grant funds may not exceed \$33,500 for any unit (which shall not be adjusted for high-cost areas).

(B) For example, in Columbus, Ohio, a recipient could pay no more than \$67,000 from grant funds provided by HUD for the cost of acquisition and rehabilitation of a one-unit single family property. This limitation was determined by multiplying the FHA single family mortgage insurance limit for a one-unit property in Columbus by 80 percent ( $\$83,750 \times 80\% = \$67,000$ ). Within this overall limitation, the recipient could spend up to \$33,500 from grant funds for rehabilitation.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) for applicable cost limitations covering both acquisition and rehabilitation). The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is prohibited. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The rehabilitation shall meet local codes applicable to rehabilitation work in the jurisdiction (but not less than the housing quality standards established under the Section 8 Certificate program), and shall include improvements necessary to meet applicable Federal requirements, and may include energy conservation-related repairs and improvements and the repair or replacement of major systems in danger of failure.

(4) *Administrative costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Counseling and training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(6) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(7) *Temporary relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(8) *Replacement reserves.* (i) Replacement reserves for the property, if necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program. Where a HOPE 3 application proposes funding of a replacement reserve, it shall describe the escrow or other arrangement that will be used to safeguard the funds (including who will administer the reserve), the basis for the proposed amount of the reserve, the proposed life of the reserve, and the proposed disposition of any remaining amounts.

(ii) Although funding of replacement reserves is an eligible expense under the notice, HUD invites comments on whether a replacement reserve is needed for a single family homeownership program, especially with respect to public and Indian housing transferred for homeownership under the program.

(iii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(9) *Legal fees.* Customary and reasonable costs of professional legal services.

(10) *Ongoing training needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(11) *Economic development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program, such as job training or retraining. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers and homeowners to be assisted.

(ii) The amount of an implementation grant that may be used for economic development activities may not exceed \$250,000.

(12) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them.

#### Section 410. Matching requirements.

(a) *Requirement for each recipient to match the HUD grant.* (1) Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section.

(2) Contributions for eligible administrative costs may be recognized for matching purposes only up to an amount equal to 7 percent of the amount of the implementation grant. (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount [section 405(b)(4).])

(3) For example, if the grant amount is \$600,000, the recipient must assure the provision of at least \$200,000 (33 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed \$42,000 (7 percent of the grant amount of \$600,000). In addition, assuming contributions of \$42,000 for

administrative costs, the applicant must provide contributions covering the remaining \$158,000 (\$200,000 - \$42,000) required for the match from non-Federal sources. Although an applicant can spend more than this on administrative costs, it may not be counted toward the match.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash Contributions from non-Federal resources.* Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (b)(2). Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(2) *Administrative costs.* Payment of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant may not count toward the match. Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act.

(3) *Taxes, fees, and other charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if no acquisition is necessary) may be counted toward the match. For example, if a city agrees to forego real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 years period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, foregone, or deferred

for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted toward the match because enforcement would be inpracticable. Where the match includes amounts under this paragraph (b)(3), the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Real property.* Real property contributed for use under an approved homeownership program.

(i) Where the eligible property is a public or Indian housing development, the cost of acquisition is not an eligible cost and, therefore, the value of such a development may not be counted as a contribution toward the match.

(ii) The as-is fair market value of real property may be counted as a contribution toward the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. For eligible property, the fair market value shall be determined in accordance with section 405(b)(2)(ii).

(5) *Infrastructure.* The fair market value of investment in on-site and off-site infrastructure required for a homeownership program. Only expenditures for capital improvements made after the date of notification by HUD of implementation grant approval that are for physical improvements directly related to and necessary for the homeownership program may be counted towards the match. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted toward the match. HUD specifically invites comments on what investment in infrastructure should count and how to value it.

(6) *Debt forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding the fair market value of a property under the program, determined under section 405(b)(2)(ii) or paragraph (b)(4), may not be counted toward the match.

(7) *Other in-kind contributions.* (i) The reasonable value of in-kind

contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program; (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at \$5 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations.

(c) *Other restrictions.* Contributions toward eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted toward the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

(Section 415) Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA to be published by HUD when funds become available. HUD will not accept any applications until after publication of the NOFA. The NOFA will advise potential applicants how to obtain an application packet and establish deadlines and other requirements for submission of applications.

(b) *Application contents.* Each application shall contain the information required by the application packet, which shall include at least the following items.

(1) *Request for HOPE Grant.* (i) The application shall contain a request for an implementation grant; (ii) a description of the personnel necessary to complete the activities; (iii) the amount of the grant requested for each activity; and (iv) a summary description of the proposed homeownership program. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Match requirements.* The application shall describe and contain commitments for, the resources that are expected to be contributed toward the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted toward the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. The applicant should submit a document evidencing a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families.

(ii) Where a public body submits an application in cooperation with a private nonprofit organization, the application shall include a written agreement that delineates their respective roles and responsibilities.

(4) *Description of proposed homeownership program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application packet (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. The schedule shall require completion of program activities under the grant

agreement no later than three years from the effective date of the grant agreement. See Section 705 for related requirements and provisions permitting HUD to permit a longer deadline for completion of program activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families.

(5) *Plan.*—(i) *Identifying and selecting families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership;

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS;

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so;

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence;

(E) Require each eligible family to agree not to lease or otherwise make the property available for occupancy by other residents during the 15-year period from the date it acquires ownership

interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation;

(F) Require any eligible family that violates the agreement made under paragraph (E) to pay the amount then due under the promissory note; and

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, and other available resources (including, for example, section 8 assistance).

(iii) *Managing sweat equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing training and counseling.* The application shall contain a plan for providing training and counseling for homebuyers and homeowners.

(6) *Eligible property.* The application shall contain the following information about the properties expected to be acquired under the program:

(i) The types and sizes of properties;

(ii) Whether the applicant expects the properties to be vacant;

(iii) Whether the properties will be owned by the Federal government, PHAs/IHAs, or State or local governments; and

(iv) The anticipated locations of the properties, by specifying particular neighborhoods where activities will be carried out and describing racial, ethnic, and gender characteristics of residents of the neighborhoods.

(7) *Housing quality standards plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials; and

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or the housing quality standards established by HUD for the Section 8 Certificate program, whichever is higher.

Higher standards may be proposed by the applicant or required by lenders.

(8) *Replacement housing.* The application may contain an application under section 18 of the 1973 Act for the disposition of units in public or Indian housing developments (see sections 110(a) and 601(d)). HOPE assistance may not be used to fund replacement housing under section 18.

(9) *Nondisplacement; participation by residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements. The use of eligible properties occupied by residents or other occupants who are not interested in, or do not qualify for, homeownership and who do not elect to move will not be feasible.

(10) *Management entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract. Where homeowners will have full responsibility (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (1) of the property, where applicable, by the applicant or other

entity, including an RC, for transfer to eligible families, and (2) by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit. No assumptions are permitted. HUD invites comments on whether assumptions should be permitted.

(12) *Affordability*—(i) *Initial affordability*. (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 (where the recipient is a PHA, RMC, or RC), part 813 (unless the recipient is a PHA, RMC, or RC), or part 905 (for Indian housing developments), as appropriate. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) Applicants are encouraged to consider the additional monthly costs of utilities and other monthly housing costs in determining whether the family can afford to purchase a unit.

(ii) *Continued affordability*. The application shall contain a feasible plan for ensuring continued affordability by homebuyers and homeowners in the eligible property. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(13) *Sales price to applicant or other entity*. The application shall specify the estimated average sales price to the

recipient for the properties expected to be acquired for homeownership under the program, the basis for the estimate, and terms (if known) to the entity that will purchase properties for resale to eligible families.

(14) *Sales prices and terms of sale to eligible families; form of ownership*. (i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) In order for the homeowner to have a continuing equity interest in the property, the proposed program shall require each eligible family to make an investment in the property, which shall either be in the form of a downpayment paid at closing from family resources or from the proceeds of a loan to the family secured by a mortgage on the property.

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet downpayment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program. An applicant may permit family to meet its downpayment obligation through "sweat equity" performed before closing.

(iv) See section 110(f) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale restrictions, if any*. The applicant shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *CHAS certification*. The application shall contain certification by the public official who submits the CHAS that—

(i) The proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located; or

(ii) For an application submitted on or before November 27, 1991 for an eligible property that is not within the jurisdiction of a State or unit of general local government that has an approved CHAS, the application is consistent with an existing State or local housing plan or strategy, as HUD determines to be appropriate, which may include a housing assistance plan under the Community Development Block Grant program.

This paragraph shall not apply to an application submitted by an IHA. IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy. However, an applicant proposing the use of Indian housing shall submit a tribal plan that outlines a housing strategy that is consistent with the development plans of other Federal agencies having responsibility for Indian land. The applicant shall demonstrate that its proposed homeownership program is consistent with the tribal plan.

(17) *Equal opportunity certifications*.

(i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(18) *Plan for Use of Certain Program Income*. The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan

shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(19) *Economic development.* The application may contain a plan for economic development activities under the program. The application shall demonstrate that there is a direct relationship between any proposed activities under section 405(b)(11)(i) and the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers and homeowners.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline for submission set forth in the NOFA to determine whether it is complete, is internally consistent, contains correct computations, and is feasible. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another neighborhood, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or correct material no later than close-of-business of the appropriate HUD office on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD shall not extend this deadline for actual receipt of the material for any reason.

(2) The purpose of this procedure is to increase the number of approvable applications so eligible families will have the best opportunities to become homeowners at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies.

#### Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet any one of the following additional threshold criteria—

(a) *Eligibility.* The application has been submitted by an eligible applicant for eligible property.

(b) *Completeness.* The application is complete, internally consistent, contains sufficient information to permit ranking on each selection criterion, and contains

computations to permit fair comparison with other applications.

(c) *Experience and capacity of applicant.* (1) The applicant or other specified entity has an administrative structure in place that is adequate to carry out the proposed program.

(2) The application demonstrates that the applicant or other specified entity has adequate internal management controls, including strong systems for financial management and cost controls, as evidenced by a copy of the last certified independent audit report or a certification from a CPA currently establishing those systems for a new entity.

(3) If the applicant or its key staff and other specified entity and its key staff have previous experience in housing acquisition, rehabilitation, or a homeownership program, their efforts have been free of serious problems and major audit findings or problems and findings have been satisfactorily resolved.

(d) *Cost limitations.* The proposed costs of eligible activities are within applicable cost limitations.

(e) *Feasibility of the homeownership program.* (1) The application sets forth a realistic schedule for implementing the proposed program, including timely acquisition and, where applicable, timely rehabilitation of properties, as well as timely property transfer to homebuyers. The schedule shall provide for completion of implementation within three years from the effective date of the grant agreement, except where a longer period is approved in accordance with section 705.

(2)(i) A sufficient number of eligible properties is available in the area in which the applicant proposes to carry out the program.

(ii) The proposed program does not result in appreciably reducing in the locality the number of affordable rental housing unit of the type to be assisted that would be available to residents currently residing in the types of properties proposed for use under the program or to families who would be eligible to reside in the properties. In the case of scattered site, single family public or Indian housing, where section 18 of the 1937 Act applies (see section 110(a)), this requirement is met automatically since section 18 of the 1937 Act requires replacement of each unit transferred to homeownership. HUD shall determine that the application complies with this criterion if it determines that no more than 10 percent of the affordable single family (one to four units) rental housing units in the market area would be converted to homeownership under this program. If

the proposed homeownership program is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units in the eligible property may exceed the 10 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(3) The proposed financing from all sources is sufficient to accomplish the program's objectives.

(4) The application demonstrates that the affordability standards in section 415(b)(12) can be met and the plan for ensuring continued affordability in section 415(b)(12)(ii) is feasible. The plan shall take into account the proposed cost of operating and maintaining the property after eligible families become homeowners and the adequacy of counseling and training of homebuyers, residents, and homeowners.

(5) Adequate supportive homeownership counseling services will be provided.

(6) If applicable, the application provides for necessary relocation benefits.

(7) The plan in section 415(b)(5)(i) for identifying and selecting eligible families to participate is acceptable.

(8) The housing quality standards plan in section 415(b)(7) is acceptable.

(9) The proposed program provides that all units in properties assisted under the program will be acquired by eligible families.

(10) The application complies with all other applicable requirements and proposes a homeownership program that is feasible, given the scope and location of the program and the administrative capacity of the applicant.

(f) *Equal opportunity and related requirements.* The applicant's certification of compliance with equal opportunity and related requirements and its statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

#### Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet the threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program in a

reasonable time and in a successful manner. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures, or by an explanation of how such capability will be obtained—10 points;

(ii) The capability of the applicant to manage the proposed homeownership program as a whole, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, or other relevant activities or by an explanation of how such capability will be obtained—10 points.

Maximum points for this criterion (1): 20 points.

(2) *Local support.* In assigning points for this criterion, HUD shall consider—

(i) The extent of commitment of the unit of general local government (or Indian tribe, where applicable) and the PHA/IHA (where it is not the applicant and is not part of the unit of general local government) in support of the program, such as the provision of social services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements—7 points.

(ii) The extent of commitment of the local community (including places of worship, banks, neighborhood or community organizations or other community groups) in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, and commitment of volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion (ii))—7 points.

Maximum points for this criterion (2): 14 points.

(3) *Quality.* In assigning points for this criterion, HUD shall consider—

(i) The quality of the applicant's efforts to maintain long-term affordability, taking into account such program features as energy conservation, improvements that will require low-cost maintenance, and long-term financing at reasonable terms—5 points; and

(ii) The extent to which the plan provides for high quality supportive services to home buyers and homeowners, such as pre- and post-homeownership counseling—5 points.

Maximum points for this criterion (3): 10 points.

(4) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction within which the eligible property is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 105(b)(7) of the Cranston-Gonzalez National Affordable Housing Act, or the proposed program is consistent with the tribal plan.

Points for this criterion (4): 5 points.

(5) *Efficiency.* In assigning points for this criterion, HUD shall consider the cost-effectiveness in using Federal grant funds, determined by dividing the requested amount of the grant (adjusted by the R.S. Means Cost Construction Index) by the total number of units expected to be assisted.

Maximum points for this criterion (5): 15 points.

(6) *MBE/WBE goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and § 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrated a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6) (i) or (ii), as applicable: 5 points.

(7) *Inventory.* In assigning points for this criterion, HUD shall consider—

(i) The extent to which the proposal will emphasize the acquisition of Federal properties, public or Indian housing, or both—3 points; and

(ii) The extent of the applicant's commitment to acquire vacant units, as described in the applicant's homeownership program plan—8 points. This subcriterion shall not be used to rate an application where use of scattered site single family public or

Indian housing is proposed for more than half of the units under the program. The maximum score for such an application will be 92. The percentage of points earned by an applicant, based on its maximum point total of 92, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking. For example, if an application receives 46 out of 92 points, or 50 percent, it will be ranked as if it had earned 50 points (50 percent of 100 points), not 46 points.

Maximum points for this criterion (7): 11 points.

(8) *Need.* In assigning points for this criterion, HUD shall consider the percentage of the number of rental households in the jurisdiction in which the program will be carried out that are living in poverty as defined by the Bureau of Census.

Maximum points for this criterion (8): 15 points.

(9) *Fair housing choice.* The degree to which the applicant's proposal furthers fair housing choice through its affirmative marketing strategy, the proposed areas in which eligible properties are located, or a combination of these factors.

Maximum points for this criterion (9): 5 points. Maximum total points: 100 points.

(b) *Environmental review.* (1) HUD shall conduct an environmental review, by considering environmental factors in each neighborhood in which the applicant proposes to carry out its program.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) is not eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken, including substituting different neighborhoods in the application or otherwise changing the boundaries of the neighborhood(s) in which the program will be carried out. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating

scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation. For example, the feasibility of the program may be impaired by any significant delay in identifying acceptable neighborhood(s).

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and selection.* (1) After assigning points to each application under paragraph (a), HUD shall rank the applications in order, by HUD Region. HUD shall select the highest ranking applications within each Region.

(2) If two or more applications have the same number of points at the point on the ranking list where the amount available to fund applications in that Region would be insufficient to fund each application, the application requesting the smallest grant shall be selected if a sufficient amount remains to fund it. If there is not a sufficient amount, the following system will be used:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the one(s) with the highest number of points for Need (criterion (8)) shall be selected, using whatever remaining funds are available.

(ii) If the tied applications are to be carried out in the same jurisdiction, the one(s) with the highest number of points for Efficiency (criterion (5)) shall be selected, using whatever remaining funds are available.

(iii) If any amounts remain after applying these procedures, they shall be reallocated in accordance with paragraph (f).

(iv) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which would result in approval of an application which was not approved will be corrected by funding that application "off the top" from amounts available for implementation grants in the next funding round.

(d) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested where it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

In addition, HUD may approve an application for a lower amount if (1) it determines there is an insufficient inventory of potential eligible properties; (2) the application sets unrealistic program goals; (3) the applicant lacks adequate past experience or otherwise is not able to carry out as large a program as requested; (4) the applicant has requested an ineligible activity; (5) the applicant has proposed an inadequate match; or (6) insufficient amounts remain in that funding round to fund the full amount requested in the application.

(e) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount. HUD's notification to the applicant of the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant by the deadline specified in the notification.

(f) *Insufficient approvable applications; reallocation.* If funds remain after HUD approves all approvable applications in a Region, the remaining amounts from each Region shall be combined and HUD shall reallocate to Regions having more applications meeting threshold requirements than can be funded from the initial allocation for that Region. Amounts that become available due to deobligation of grant amounts shall also be reallocated. HUD shall reallocate funds using the same factors as used for the original allocation.

#### V. Other Requirements

##### Section 501. Flood insurance and Coastal Barriers Resources Act.

(a) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barrier Resources System.

##### Section 505. Nondiscrimination and equal opportunity.

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, as described in section 505(a)(2), the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 55 FR 24752-53 and 24755

(June 18, 1990), revising 24 CFR 905.165 (a) and (b) and § 905.360; compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 55 FR 24754 and 24755 (June 18, 1990), revising 24 CFR § 905.170(b) and § 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(e) *Affirmative fair housing marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2).

(f) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

#### Section 510. OMB circulars.

The policies, guidelines, and requirements of OMB Circular Nos. A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Circular Nos. A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of the Cranston-Gonzalez National Affordable Housing Act, other Federal statutes, or this notice. Recipients are

also subject to the audit requirements of OMB Circular A-128 implemented at 24 CFR part 44, and OMB Circular A-133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

#### Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

#### Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

#### Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

#### Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A-110 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or

responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, were applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in this paragraph;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

### Section 535. Labor standards.

If other Federal programs are used in connection with the HOPE 3 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization program is used in connection with the program, the labor standards requirements of that program would apply to the extent required by it.

### Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

### VI. Grant Agreement

#### Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. The grant agreement shall provide that the recipient agrees: (a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) Where the identity of the particular property to be acquired is not known at the time the application is approved, to obtain HUD approval under applicable historic preservation requirements before acquiring any property;

(d) That no amounts may be drawn down under the grant agreement with respect to units in a public or Indian housing development until HUD approves an application for disposition under section 18 of the 1937 Act and implementing regulations; and

(e) That HUD may withhold, withdraw, or recapture any portion of a grant, or to terminate the grant agreement, if HUD determines that the recipient is or is likely to fail to carry out the approved homeownership program in accordance with the terms of

the approved application and this notice, including failure to provide the contributions towards the match.

### VII. Implementation

#### Section 701. Implementation; performance standards; tax consequences.

(a) After execution of its implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

(c) HUD will consult with the Internal Revenue Service on the tax consequences to eligible families under the program, and advise recipients of the advice received.

#### Section 705. Deadline for completion of program activities.

A recipient shall spend all implementation grant amounts within three years from the effective date of the grant agreement. An applicant may propose in its application a longer period for completion of activities, together with a justification. After application approval, HUD may approve a request to extend the deadline for the completion of eligible activities, where it determines that unanticipated, extraordinary circumstances exist.

#### Section 710. Social security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

#### Section 715. Timely homeownership.

(a) *Deadline for transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of reasonable period of time.* (1) Except for eligible property already owned by the entity that will transfer to eligible families, all eligible

properties shall be acquired within one year of the effective date of the implementation grant agreement. All properties shall be transferred to eligible families within one year of the date of acquisition of the property. The transfer shall involve (i) acquisition of ownership interests in the property, or (ii) a lease providing for purchase by the family or other type of conditional ownership agreement providing for transfer of ownership interest to the family within two years of the date of execution of the lease.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist.

#### Section 720. Restrictions on Resale by Initial Homeowners.

(a) *In general—(1) Transfer Permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) and the requirement for the purchaser to execute a promissory note, if required under paragraph (b). See paragraph (b) for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i), an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient shall have the right to purchase the ownership interest in the unit for the amount specified in the firm contract.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have

sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory note required; determination of amount homeowners may retain from sales proceeds.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c).

(B) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c). Any excess is distributed as provided in paragraph (d).

(C) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by  $\frac{1}{168}$  of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(D) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership),  $\frac{5}{168}$  (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage,

for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years  $\times$  12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years  $\times$  12),  $\frac{72}{192}$  (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Determination of equity interest of initial homeowner in property.* The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(1) The contribution to equity paid by the family (such as any down payment and any amount paid towards principal on a mortgage loan during the period of ownership);

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the recipient or other

entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c) (1) and (2) (excluding the value of any sweat equity or volunteer labor used to make improvements to the unit).

The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(d) *Use of amounts a family may not retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 3 program, subject to any limitations contained in appropriations Acts.

#### Section 725. Use of Proceeds From Sales to Eligible Families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

#### Section 730. Third Party Rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements

apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

#### Section 735. Displacement Prohibited; Protection of Nonpurchasing Residents.

(a) *Displacement prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violations of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of this paragraph may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation assistance for residents who elect to move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program. The program shall provide, at least, the following assistance:

(1) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(2) Payment for actual, reasonable moving expenses; and

(3) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and

sanitary housing. This requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(d) *Notice of relocation assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

#### VIII. Records, Reports, and Audit of Recipients

##### Section 801. Recordkeeping

(a) *General records.* Each recipient shall keep records that will facilitate an effective audit and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family size and income and racial, ethnic, and gender data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and condominium agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts available for reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to

HUD under section 720(d) and section 725.

##### Section 805. Reports.

The recipient shall submit reports required by HUD.

##### Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation, each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by section 801.

#### IX. Waiver Authority

##### Section 901. Waiver authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of applications (including receipt of any modifications to applications). Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Community Planning and Development. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a public and Indian housing regulation is requested for the HOPE 3 program, it may be waived by the Assistant Secretary for Public and Indian Housing. The Secretary periodically will publish notice of granted waivers in the Federal Register. HUD may change submission deadlines established by this notice by subsequent notice published in the Federal Register.

#### X. Other Matters

##### Information Collections

HUD has submitted the collection of information requirements for this program to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

| Description               | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total  |
|---------------------------|--------------------|---------------------------------|------------------------|--------------------|--------|
| Application:              |                    |                                 |                        |                    |        |
| Section 415.....          | 600                | 1                               | 600                    | 42                 | 25,200 |
| Recordkeeping             |                    |                                 |                        |                    |        |
| Sections 801 and 805..... | 400                | 1                               | 400                    | 40                 | 16,000 |
|                           |                    |                                 |                        |                    | 41,200 |

#### Impact on the Economy

These guidelines would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would, as defined by that order, have (a) an annual effect on the economy of \$100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th St. SW., Washington, DC 20410.

#### Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30

p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St. SW., Washington, DC 20410.

#### Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in these guidelines will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

#### Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive

Order 12612, *Federalism*, that the provisions in these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

#### Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that these guidelines would not have a significant economic impact on a substantial number of small entities. They would govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Dated: January 28, 1991.

**Jack Kemp,**  
Secretary.

FR Doc. 91-2406 Filed 2-1-91; 8:45 am]  
BILLING CODE 4210-32-M

# **Federal Register**

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Monday  
February 4, 1991

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Part XI

## **Department of Housing and Urban Development**

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Office of the Secretary

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24 CFR Parts 203 and 234  
HOPE Grant Programs; Interim Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 203 and 234**

[Docket No. R-91-1511; FR-2965-I-01]

**HOPE Grant Programs; Interim Regulations Related to the HOPE Programs**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** This interim rule amends parts 203 and 234 of title 24 of the Code of Federal Regulations to make changes to the FHA Single Family Mortgage Insurance program regulations in support of HUD's new HOPE Grant programs.

The HOPE Grant program guidelines are published elsewhere as notices in today's edition of the *Federal Register*. The notices govern the operation of the three HOPE Grant programs, which provide for homeownership by low-income families, as follows:

HOPE for Public and Indian Housing Homeownership (HOPE 1);  
HOPE for Homeownership of Multifamily Units (HOPE 2); and  
HOPE for Homeownership of Single Family Homes (HOPE 3).

The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990).

**DATES:** Effective date: February 4, 1991.  
Comment due date: May 6, 1991.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals

will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (voice (202) 708-2084 or TDD (202) 708-3259).

**FOR FURTHER INFORMATION CONTACT:**

For HOPE 1: Gary Van Buskirk, Homeownership Division for Public and Indian Housing, Room 4112, 202-708-4233.

For HOPE 2: Lawrence Goldberger, Office of Housing, Room 6130, 202-708-0720.

For HOPE 3: John Garrity, Office of Urban Rehabilitation, Room 7158, 202-708-0324.

To provide service for persons who are speech- or hearing-impaired, these numbers may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300.

The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers (other than TDD "800" numbers) are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

**I. Paperwork Reduction Act Statement**

Any information collection requirements contained in this rule are covered by the notices published for the three HOPE Grant programs.

**II. Justification for Interim Rule Making**

The Cranston-Gonzalez National Affordable Housing Act authorizes implementation of the HOPE Grant programs by Federal Register notice. This rule contains amendments to the FHA Single Family Mortgage Insurance Program regulations that will support the operation of these programs. Because the Congress authorized use of notices published for immediate effect to implement the HOPE programs, the Department finds that there is good cause to publish these supporting regulatory amendments for immediate effect as well. Public comment is being solicited on the several HOPE notices, and final rules will be published codifying these programs within eight months of the date of publication of a NOFA for the HOPE Grant programs. The NOFA will not be published until Congress appropriates funds for the programs. Public comments received in response to the publication of this interim rule will also be taken into account in the related final rule.

**III. FHA Single Family Mortgage Insurance Program Requirements**

In the single family FHA mortgage insurance programs, there is a

requirement for a down payment by the mortgagor in cash or the equivalent. A recipient under the HOPE programs may provide the down payment for an eligible family/mortgagor who finances the purchase of a home with a mortgage insured under the FHA Single Family Mortgage Insurance program. Accordingly, section 429 of the Cranston-Gonzalez National Affordable Housing Act amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) are being amended by this interim rule to reflect this exception to the usual requirements of these FHA program regulations.

These amendments provide that a mortgagor being assisted in the purchase of a housing unit under the procedures outlined in the Cranston-Gonzalez Affordable Housing Act may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property, even though the entity holding a second mortgage is not a Federal, State or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

**Findings and Certifications**

The findings and certifications set out in the notices being published today for the HOPE Grant programs cover the amendments being made by this rule.

**List of Subjects**

**24 CFR Part 203**

Hawaiian natives, Home improvement, Loan programs: housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

**24 CFR Part 234**

Condominiums, Mortgage insurance, and Reporting and recordkeeping requirements.

Accordingly, parts 203 and 234 of title 24 of the Code of Federal Regulations are amended as follows:

**PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS**

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

**§ 203.19 [Amended]**

2. In § 203.19, the first sentence in paragraph (b) is amended by adding the phrase "or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act" after the phrase "Housing Act of 1961".

**§ 203.32 [Amended]**

3. In § 203.32, paragraph (b) is amended by adding the phrase ", or entity designated in the homeownership plan submitted by an applicant for an

implementation grant under the Homeownership and Opportunity Through HOPE Act," after the word "instrumentality".

**PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE**

The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520 (a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

**§ 234.28 [Amended]**

5. In § 234.28, the first sentence in paragraph (c) is amended by adding "or who is purchasing a housing unit in

connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act" after the phrase "as of the date the mortgage is accepted for insurance".

**§ 234.55 [Amended]**

6. In § 234.55, paragraph (b) is amended by adding the phrase ", or who is purchasing a housing unit in connection with a homeownership program under the Homeownership and Opportunity Through HOPE Act," after the word "instrumentality".

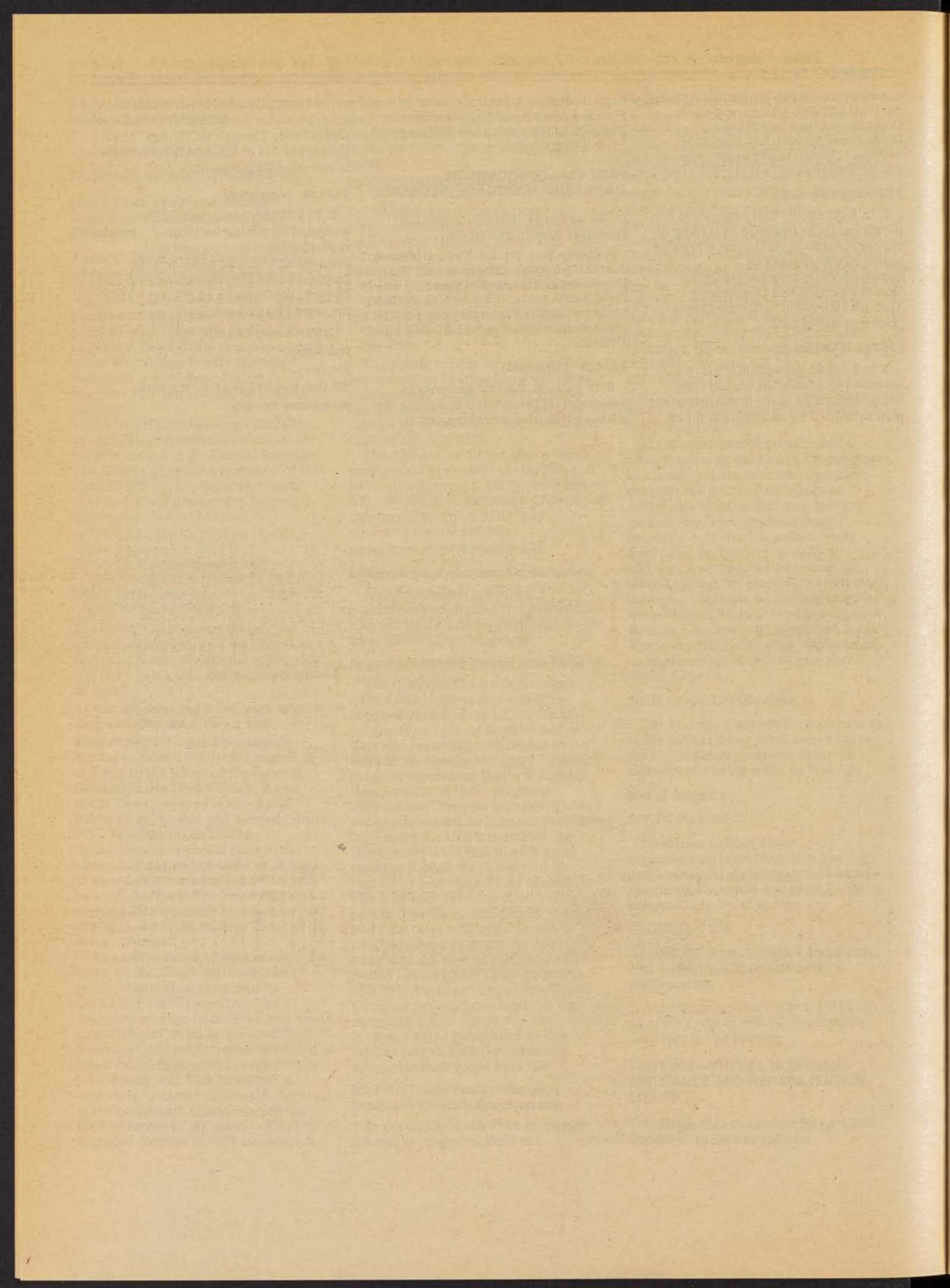
Dated: January 28, 1991.

**Jack Kemp,**

*Secretary.*

[FR Doc. 91-2401 Filed 2-1-91; 8:45 am]

**BILLING CODE 4210-32-M**



# Federal Register

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Monday  
February 4, 1991

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## Part XII

### Department of Housing and Urban Development

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Office of the Secretary

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24 CFR Part 91

**Comprehensive Housing Affordability  
Strategies; Interim Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT****24 CFR Part 91**

[Docket No. R-91-1507; FR-2932-I-01]

RIN 2501-AB13

**Comprehensive Housing Affordability  
Strategies****AGENCY:** Office of the Secretary, HUD.**ACTION:** Interim rule and request for comments.

**SUMMARY:** President Bush signed the Cranston-Gonzalez National Affordable Housing Act on November 28, 1990. The Act affirms the national goal that every American family be able to afford decent housing in a safe and livable neighborhood. Among the new housing programs the Act created to assist State and local governments achieve this national housing policy are the HOME Investment Partnerships (created by title II of the Act) and the HOPE programs (created by titles IV, V and VIII of the Act). The centerpiece to these new programs, as well as to management of existing programs, is the Act's requirement that State and local governments must have Comprehensive Housing Affordability Strategies. This rule implements section 105 of the Act, which prescribes the development of these housing strategies, as well as sections 107 and 108, which prescribe the citizen participation procedure for development of the housing strategies and the compliance procedures to be followed by State and local governments.

**DATES:** Effective date: March 6, 1991. Comments must be received by May 6, 1991. Those sections of this rule that contain information collection requirements (§§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by the Department in the *Federal Register*.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Note that comments on

the information collection requirements contained in the rule should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20303, Attention: Wendy Sherwin, Desk Officer for HUD.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may call the Rules Docket Clerk at (202) 708-2084 to confirm receipt.

**FOR FURTHER INFORMATION CONTACT:** David Cohen, Director, Office of Urban Rehabilitation, Office of Community Planning and Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2685.

**SUPPLEMENTARY INFORMATION:****I. Information Collections**

The information collection requirements contained in §§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75 of this rule have been submitted to the Office of Management and Budget (OMB) for expedited review under the Paperwork Reduction Act of 1980. When these collections have been approved, a Notice will be published to that effect in the *Federal Register*. Until that time no person may be subjected to a penalty for failure to comply with these information collection requirements.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart included under the heading of Findings and Certifications. We note that much of the data to be used by State and local governments to comply with the requirements of this rule is available from the Census Bureau, and that HUD will supply the jurisdictions with the relevant portions of that data, as well as with data on the HUD-assisted housing inventory, minimizing the burden on the jurisdictions. Send comments regarding burden estimates or any other aspect of these collections of information,

including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, Washington, DC 20503, Attention: Wendy Sherwin, Desk Officer for HUD. At the end of the public comment period on this rule, the Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

**II. Background**

Since Fiscal Year 1975, the Department has required the preparation of a local housing planning document as a condition to receipt of certain types of funding to local governments. First, a Housing Assistance Plan (HAP) was required under the Community Development Block Grant Program (and used in connection with assisted housing programs). Then when the Stuart B. McKinney Homeless Assistance Act was enacted, a Comprehensive Homeless Assistance Plan (CHAP) was required as a condition of approval of funding for a locality's program to provide shelter for homeless persons. Now the Cranston-Gonzalez National Affordable Housing Act (Cranston-Gonzalez Act or the Act) has created a new planning document for use by States as well as units of general local government—the Comprehensive Housing Affordability Strategy (CHAS or housing strategy). This CHAS incorporates useful elements of the HAP and CHAP, and it will eventually replace both of them. Inclusion of all housing related elements in a single planning document will make the resulting document a more useful tool for addressing housing needs. Instead of dealing with a specific funding source, the housing strategy will create the impetus for a jurisdiction to examine its housing needs in a holistic way, establish goals, and develop a plan for carrying out those activities.

The housing strategy will serve as an action-oriented management tool for States and local governments. It will also serve as a monitoring tool for HUD to determine how effectively a jurisdiction is satisfying the needs identified within available resources. In its CHAS, a State or local government will estimate the housing assistance needs of its very low-income, low-income, and moderate income families, including the needs of homeless individuals and families, and will assess

the availability of unassisted housing, assisted housing, and other resources for addressing these needs. On the basis of this information, the jurisdiction will develop a strategy for meeting these housing assistance needs over the next five years. Each year, the jurisdiction will decide how the available resources will be used to provide affordable housing for needy families.

The Comprehensive Housing Affordability Strategy document will consist of five components, each with tabular summaries and supporting narrative, that integrate the fifteen statutory items described in more detail in this rule. (References below to paragraphs are to the lettered paragraphs of both §§ 91.15 and 91.20, unless otherwise noted.) Beginning in FY 1993 (October 1, 1992), HUD will provide special tabulations of decennial census data from the U.S. Census Bureau as the basis for the tabular summaries of need and market and inventory conditions integral to the first two components. The community may accept and submit this information as is, or may present its own updated estimates in a format at least as detailed, in accordance with standards prescribed by HUD. (Detailed statistics will be optional for the 1991 and 1992 CHAS submissions, but jurisdictions will be responsible for providing estimates of need and market conditions on which to base the rest of the CHAS.) In addition, HUD will provide to jurisdictions, to the extent feasible, data on the HUD-assisted housing stock.

—The first part, the *Needs Assessment*, (corresponding to paragraphs a and b) will summarize available data on the current needs of the homeless and of income-eligible families with housing. Jurisdictions are required to project those needs for the ensuing five-year period.

—Part two, *Market and Inventory Conditions*, will summarize local market and inventory characteristics, including trends in population, household formation, and housing (paragraph c). Information on the assisted housing and the public housing stock (§ 91.15(i)) will also be presented here.

—The third part, *Strategies*, will integrate the review of needs and conditions in a structured format, to determine priorities for investment over the ensuing five-year period (paragraph b). The relevant local policies (and State policies) (paragraph d), local institutional structure (paragraph e), and local activities to involve public housing residents in management and

ownership (paragraph j) will be considered.

—Part four, *Resources*, will review the various types of resources needed and anticipated to be available to implement the strategy (including resources for homelessness, paragraph b), including the private, Federal, and non-Federal public resources (paragraph f) and plans for coordination (paragraph h) and use of the Low-Income Housing Tax Credit (§ 91.20(i)). The summary table will show the dollars anticipated from each Federal program over the coming year, and indicate the State/local resources available to meet matching requirements for different types of uses.

—The final part, *Implementation*, translates the five-year strategy and the available resources into plans (paragraph g) and goals (paragraph n) for the number of families to be assisted in the ensuing year, including the number of the provided affordable housing as defined in the HOME Program (paragraph n) with the resources identified in the fourth part. It will also cover specifics of the plans for assisting the homeless (called for in paragraph b), and include monitoring details and certifications regarding fair housing and relocation (paragraphs k, l, and m).

The Act requires that, in order to receive funding under certain HUD programs, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy that has been approved by HUD for a fiscal year. In addition, for certain other programs, the Act requires that an application include a certification of consistency of the proposal with an approved housing strategy for the jurisdiction in which the proposed project will be located. [All Section numbers stated throughout this Preamble relate to the Cranston-Gonzalez Act, unless otherwise noted.]

For FY 1991 funding, a certification is necessary for applications for the Supportive Housing for Persons with Disabilities Program, authorized under Section 811 of the Act (to be a new CFR part 890), for the Supportive Housing for the Elderly Program, authorized under section 202 of the Housing Act of 1959 (to be a new part 889), and for the HOME Program (Sec. 215)—if funding becomes available this year.

With respect to many of the programs for which a certification of consistency is required, HUD has the discretion to continue using other planning documents for a period of time. The Department is exercising its authority to provide for a transition from the current

planning documents (CHAP or HAP) until October 31, 1991, so that jurisdictions need not submit a housing strategy before October 1991 for the following programs: Homeless Housing Assistance, such as Emergency Shelter Grants (ESG) (part 576); Transitional Housing (part 577); Permanent Housing for Handicapped Homeless (part 578); Supplemental Assistance for Facilities to Assist the Homeless (part 579); and Single Room Occupancy for the Homeless (part 882, subpart H); Community Development Block Grants (CDBG, including Entitlements, Small cities, States, and Special Purpose) (part 570); HOPE I, II and III Homeownership Programs (Secs. 411, *et seq.*; 421, *et seq.*; and 441, *et seq.*, respectively); Low-Income Housing Preservation (prepayment avoidance incentives, Section 601); Shelter Plus Care (Sec. 837); and Housing Opportunities for Persons with AIDS (Sec. 854).

Public Housing and Indian Housing funding and section 8 assistance, generally, are not dependent on existence of, or certification of consistency with, an approved housing strategy for the jurisdiction. Programs that refer to the housing strategy, but do not require a certification of consistency with it, are the section 8 Program—as one basis for determination of exception rents and allocation of funding (Secs. 543(b) and 556), and the Family Self-Sufficiency Program (section 554) for determination of when a public housing agency is not required to operate that type of program. In addition, as a homeless assistance program, the section 8 Moderate Rehabilitation Single Room Occupancy is dependent on it (Sec. 441, McKinney Act).

Indian Tribes are not included in the Act's definition of a "jurisdiction", the entity charged with submitting a CHAS. The Department has concluded that they need not submit a housing strategy, and need not submit a certification of consistency with a housing strategy. Therefore, there is no mention of Indian Tribes in the rule itself. The Indian CDBG Program, authorized by section 106 of the Housing and Community Development Act of 1974, the HOPE I Program, authorized by section 411 of this Act, and the HOPE III Program, authorized by section 441 of the Act, permit participation of Indian Tribes and Indian Housing Authorities, and those programs refer to certification of compliance with an approved housing strategy. However, the Department believes that, given the sovereign status of Indian Tribes, it would be inappropriate for a State to be deemed the "appropriate" jurisdiction to apply

its housing strategy to programs administered by Indian Tribes.

### III. Purpose of the Cranston-Gonzalez Act

The purposes of the Act, as stated in section 103 of the Cranston-Gonzalez Act, are the following:

(1) to help families not owning a home to save for a downpayment for the purchase of a home;

(2) to retain wherever feasible as housing affordable to low-income families those dwelling units produced for such purpose with Federal assistance;

(3) to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(4) to expand and improve Federal rental assistance for very low-income families; and

(5) to increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

This rule's goal is to promote those purposes by requiring the preparation of a single planning document that encompasses a jurisdiction's housing needs, with a focus on affordable housing for low-income families. The objectives to be promoted through this planning process are to preserve affordable housing units developed with Federal assistance; to produce housing for low-income and moderate-income families through private-public partnerships; to expand the availability of rental assistance for very low-income families; to increase the supply of supportive housing; and to help families aspiring to become first-time homebuyers.

### IV. Monitoring

As part of its housing strategy, each jurisdiction must provide information on the standards and procedures it will use to monitor recipients of assistance for compliance with contractual requirements and applicable regulations. Each jurisdiction will also report annually to HUD on the progress made in implementing its housing strategy. The Department believes that monitoring is a critical component in the long-term success of the programs covered. As part of its monitoring responsibilities, the Department will be looking at both the standards and procedures provided by the jurisdictions, as well as how well they are being carried out. Because of the importance of these activities, the Department is seeking public comment on what additional requirements, if any, would be useful.

### V. Transition

In accordance with section 105(a), the Secretary has determined that Comprehensive Housing Affordability Strategies generally will first be submitted for Federal Fiscal Year 1992. The submissions will be due on October 31, 1991, to cover the period of October 1, 1991 through September 30, 1992. Housing strategies submitted by October 31, 1991 will be approved by December 30, 1991, if they are complete and are consistent with the purposes of the Act. If HUD finds that there are deficiencies in the CHAS, it could take up to an additional five months to correct these deficiencies. Funding decisions made after a strategy is approved will depend on the approved CHAS (perhaps as early as January 1992, for strategies submitted by October 31, 1991). Since funds may be made available for Fiscal Year 1992 early in calendar year 1992, it will be to a jurisdiction's benefit to start the process as early as possible, so that an approved CHAS will be in place when funding availability is announced.

The purpose of publishing this rule in early 1991 as an interim rule is to permit jurisdictions to know, at the earliest possible time, what may be required of them no later than early 1992. Most programs will require the submission of a CHAS or certification of compliance with a CHAS by October 31, 1991. The development of a CHAS, including solicitation of citizen comments in a public hearing process, is expected to take at least six months. To be able to gear up to perform these tasks, many jurisdictions will need significant additional time, particularly if they have never before prepared such documents (such as several of the States).

In addition, there are two principal types of circumstances that would warrant submission of a housing strategy before October 1991: an application for funds under the HOME program, if Federal Fiscal Year 1991 funding becomes available for that program, or an application for FY 1991 funding under the Supportive Housing for the Elderly (Section 202 of the 1959 Act) or Supportive Housing for Persons with Disabilities (Section 811) Programs, which require a certification of consistency with an approved housing strategy. In either of these cases, the period to which the housing strategy applies should be greater than a 12-month period, starting from the date of submission and running through September 30, 1992.

If funds become available for the HOME Program in FY 1991 and a formula allocation is published,

jurisdictions that want to participate will have only 30 days to notify the Department of their interest in participating, and only 90 days thereafter to submit a housing strategy. Unlike some other programs created by the Cranston-Gonzalez Act, there is no other planning document that is authorized to be substituted for the housing strategy in the HOME program.

Since funding during FY 1991 of the Supportive Housing Programs depends on certification of compliance with an approved housing strategy, that document must be submitted before the generally applicable submission date—in time to be approved as part of the funding award process. If funding is not available for the HOME Program when applications are solicited for the Supportive Housing Programs, and there is no State CHAS, then an abbreviated strategy may be submitted under § 91.25. In FY 1991, the abbreviated strategy may be the approved HAP for that jurisdiction or, if there is no approved HAP, an identification of needs of elderly persons or persons with disabilities, as appropriate, and a strategy to meet those needs.

It should also be pointed out that the applicant for funding may not always be a State or local government, responsible for submitting a CHAS. In the case of Supportive Housing for the Elderly or Persons with Disabilities, an application for funding will be submitted by a nonprofit corporation, which would have to obtain a certification from the State or local government that its application is consistent with the CHAS. If the jurisdiction does not anticipate applying for other forms of assistance for which approval of a CHAS is necessary, it must submit a housing strategy to enable applications for Supportive Housing for the Elderly or Persons with Disabilities to be funded in the jurisdiction. In such a case, the local jurisdiction will be permitted to submit an abbreviated housing strategy, with which it can certify the proposed project is consistent. (For FY 1991, the abbreviated strategy can be as described in the previous paragraph.)

This problem may not arise after fiscal year 1992, when States will, doubtless, have approved housing strategies. At that point, the applicant should seek certification of consistency with the approved strategy of the lowest level of government that has one. (If State and local governments do not submit housing strategies, they may, in effect deprive their jurisdictions of funding for such programs.)

In some cases, States and localities now have their own housing strategies.

If, at the time a jurisdiction first submits a CHAS, whether for 1991 or 1992, it already has its own housing strategy that contains most of the elements required under this rule, it may comply with the CHAS requirements by submitting a modified version of its own strategy. With its strategy, the jurisdiction must supply information about the location of the HUD-required elements, supplemented with information required by HUD that is not included in its own strategy. In addition, this submission, including the supplement, must be prepared in compliance with the citizen participation requirements of this rule.

Since the Department recognizes that the CHAS imposes new requirements, it expects the first year or two to be a time for capacity building. In the first year, HUD will accept data already obtained by jurisdictions, delaying until October 1992 strict compliance with the requirement for detailed statistical presentation of household needs and market conditions. During the second year, HUD will work with jurisdictions on developing their CHAS, providing them with census data appropriate for the CHAS as soon as possible. It also will provide information developed by the Secretary's Task Force on Affordable Housing, which will be useful in determining the effects of public policy on affordable housing. Any data other than that from the U.S. Decennial Census that is used for the CHAS must conform with HUD standards, to be specified in administrative instructions.

#### VI. Possible Changes in the Final Rule

HUD plans to publish a final rule on this subject matter, with full attention to the public comments received, within twelve months of the publication date of today's document. One possible change in the rule on which the Department would like public comment is the addition to the Strategy for a State

(§ 91.20) of an element similar to the public housing stock element of the Strategy for a Unit of General Local Government (§ 91.15), to encourage the States to take a stronger role in preserving and improving the public housing stock. The new element would require the State to describe the number of public housing units in the State and in each of the geographic subdivisions about which it provides data, the condition of those units, the restoration and revitalization needs of the public housing projects in these areas, as well as the State's strategy to contribute to the improvement of the management and operation of these projects and to the improvement of the living environment of low- and very low-income families residing in public housing.

#### VII. Amendments to Existing Regulations

As discussed above, the requirement for a certification of consistency with the jurisdiction's housing strategy is a requirement added by the Act to programs that are now operational. As part of this rulemaking procedure, the regulations for those programs must be amended to reflect this change. Accordingly, parts 570, 576, 577, 578, 579 and subpart H of 882 will be modified in a technical rule to promptly follow this rule's publication, to reflect the new requirement for certification.

#### Findings and Certifications

**Environmental Review.** A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

**Impact on the Economy.** This rule does not constitute a "major rule" as

that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Impact on Small Entities.** In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it requires only the minimum burden required by the Act in the way of a planning document. To the extent that a small entity might be involved in a single HUD-funded activity, it might be able to submit an abbreviated housing strategy, in accordance with § 91.25. This minimizes the impact, to the extent possible, of the Act's requirements.

**Regulatory Agenda.** This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

**Information Collection Requirements.** The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden of the provisions of this rule that the Department has determined contain information collection requirements is provided as follows:

#### ANNUAL REPORTING BURDEN; INTERIM RULE—COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

| Description  | Respondents | Annual hrs. | Hourly rate | Annual cost |
|--|-------------|-------------|-------------|-------------|
| <b>Complete Submission (every 5 years)</b>                     |             |             |             |             |
| CHAS (§§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.55, 91.70)..... | 1,078       | 240         | \$15.00     | \$3,880,800 |
| Citizen participation (§§ 91.40, 91.45, 91.50).....            | 1,078       | 18          | 15.00       | 129,360     |
| Publication cost (§ 91.40(b)).....                             | 1,078       |             | * 100.00    | 107,800     |
| Performance Report (§ 91.75).....                              | 1,078       | 40          | 15.00       | 646,800     |
| Total Annual Cost to Jurisdictions.....                        |             |             |             | 4,764,760   |
| <b>Annual Updates (following 4 years)</b>                      |             |             |             |             |
| CHAS.....  | 1,078       | 80          | \$15.00     | \$1,293,600 |
| Citizen participation.....                                     | 1,078       | 18          | 15.00       | 129,360     |
| Publication Costs.....   | 1,078       |             | * 100.00    | 107,800     |

## ANNUAL REPORTING BURDEN; INTERIM RULE—COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY—Continued

| Description                             | Respondents | Annual hrs. | Hourly rate | Annual cost |
|---|-------------|-------------|-------------|-------------|
| Performance Report.....                 | 1,078       | 40          | 15.00       | 646,800     |
| Total Annual Cost to Jurisdictions..... |             |             |             | 2,177,560   |

<sup>1</sup> It is anticipated that jurisdictions that are CDBG recipients will hold their CHAS public hearings in conjunction with their CDBG public hearings.  
<sup>2</sup> Per year.

**Federalism Impact.** The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, since it simply carries out a statutory mandate for States and localities to document their need for HUD housing assistance and to evaluate their success. The planning and assessment mechanism established by statute and implemented in this rule is substituted for ones currently required in several HUD programs. States and localities still retain the authority to develop their own goals. Both the statute and the rule provide that a decision by a State or locality to pursue policies that may adversely affect housing affordability may not be used as a basis for HUD disapproval of a housing strategy. Since the relationships are not disturbed, the rule is not subject to review under the Order.

**Impact on the Family.** The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

**Justification for an Interim Rule.** In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own rule on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." 24 CFR 10.1. The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is impracticable and contrary to the public interest.

In this case, the housing strategy document is needed no later than April of 1991 so that funding of such programs as Supportive Housing for the Elderly

and Supportive Housing for the Disabled will be able to take place as scheduled in June of 1991. Moreover, if FY 1991 funding is made available for the HOME Program, the CHAS will be required to be submitted by Summer of 1991 for that program. In order to submit a housing strategy to HUD, a jurisdiction is likely to need about six months, including time to conduct the required public hearings. With the usual procedure of publication of a proposed rule for comment before development and publication of a final rule that responds to the comments, a rule would not be effective soon enough to allow for submissions by Summer of 1991. Thus, delay to obtain public comments would effectively deny applicants the ability to receive funding for these programs in 1991. Therefore, it is impracticable and contrary to the public interest to delay publication of an effective rule implementing the Comprehensive Housing Affordability Strategy portion of the Act until public comments were received, analyzed and the rule revised.

The immediate need for the rule may not affect every jurisdiction during FY 1991, e.g., if an application for funding of a Supportive Housing project is not submitted and the jurisdiction does not qualify for or choose to submit an application for funding under the HOME Program. To the extent that the rule does not affect a jurisdiction, its issuance for effect will be harmless.

This housing strategy rule will eventually affect most participants in HUD programs. Consequently, the Department has decided to solicit public comment and to prepare a final rule based on consideration of comments received. Some jurisdictions will prepare housing strategies during 1991 and will be able to contribute the benefit of experience under this rule in their comments. The final rule will take effect for submissions due in October 1992 and thereafter.

#### List of Subjects in 24 CFR Part 91

Grant programs—housing and community development, Reporting and recordkeeping requirements, Homeless.

Accordingly, a new part 91 is added to subtitle A of title 24 of the Code of Federal Regulations, to read as follows:

## PART 91—STATE AND LOCAL HOUSING AFFORDABILITY STRATEGIES

### Subpart A—General

#### Sec.

91.1 Purpose and applicability.

91.5 Definitions.

91.10 Review by courts.

### Subpart B—Contents of Strategy

91.15 Strategy for a unit of general local government.

91.20 Strategy for a State.

91.25 Abbreviated Strategy.

### Subpart C—Coordination and Consultation

91.30 Coordination of State and local housing strategies.

91.35 Consultation with social service agencies.

### Subpart D—Citizen Participation

91.40 Preparation of housing strategy.

91.45 Substantial amendment to housing strategy or submission of performance report.

91.50 Resolution of citizen complaints.

### Subpart E—HUD Review and Approval

91.55 Submission of housing strategy.

91.60 Approval of a strategy.

91.65 Actions in case of disapproval of a strategy.

91.70 Amendment and resubmission of a housing strategy.

### Subpart F—Performance Reports and Reviews

91.75 Performance reports.

91.80 HUD performance reviews.

### Subpart G—Miscellaneous

91.99 Waiver authority.

Authority: Secs. 101-103, Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101-625, 104 Stat. 4079 (42 U.S.C. 12701-12708); 42 U.S.C. 3535(d).

### Subpart A—General

#### § 91.1 Purpose and applicability.

##### (a) Purpose.

(1) *Housing strategy.* The purpose of the State and local housing affordability strategy is to assure that jurisdictions receiving HUD assistance plan for the housing and related needs of very low-income, low-income, and moderate-income families in their jurisdictions in a way that improves the availability and affordability of decent, safe, and sanitary housing in a suitable living environment, including housing for

persons needing supportive services, using private resources as well as governmental ones, and including both homeownership and rental options. It is this comprehensive housing affordability strategy document, and the associated certification and monitoring procedures, which assures that the purposes of the Cranston-Gonzalez National Affordable Housing Act are carried out under various programs administered by HUD.

(2) *The Act.* The purposes of the Cranston-Gonzalez National Affordable Housing Act (hereafter, the Act) are the following:

(i) To help families not owning a home to save for a downpayment for the purchase of a home;

(ii) To retain, wherever feasible, as housing affordable to low-income families, those dwelling units produced for such purpose with Federal assistance;

(iii) To extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(iv) To expand and improve Federal rental assistance for very low-income families; and

(v) To increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(b) *Applicability.*

(1) *General.*

(i) In order to receive funding under certain HUD programs, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy (CHAS or housing strategy) that has been approved by HUD. This housing strategy initially includes estimates for a five-year period. It must be updated every year, with a complete submission generally due every five years, as described in § 91.55(b).

(ii) In certain HUD programs, an applicant must submit a certification that the proposed housing activity is consistent with the approved housing strategy for the jurisdiction in which the proposed project will be located. In the case of an applicant other than a jurisdiction that seeks HUD funding, the certification must be obtained from the lowest level of government that has an approved housing strategy. For example, if a local government does not have an approved housing strategy, a non-profit organization seeking to build Supportive Housing for the Elderly may obtain certification from the State of

consistency of the project with the State's approved housing strategy.

(2) *Programs covered.* Proposed housing activities to be funded under the following programs will be approved by HUD only if there is a certification of consistency with an approved housing strategy covering the jurisdiction in which the housing is to be located. (Under some of these programs there are transition provisions, delaying the effective date of their reliance on the CHAS—check the regulations for the individual programs.):

(i) The HOME Program (Title II of the Act);

(ii) The HOPE I (Public Housing Homeownership) Program (Secs. 411–419 of the Act, adding Title III to the United States Housing Act of 1937);

(iii) The HOPE II Program (Homeownership of Multifamily Units) (Secs. 421–431 of the Act);

(iv) The HOPE III Program (Homeownership of Single Family Homes) (Secs. 441–448 of the Act);

(v) The Low-Income Housing Preservation Program (prepayment avoidance incentives, Secs. 601–613, creating the Low-Income Preservation and Resident Homeownership Act of 1990);

(vi) The Shelter Plus Care Program (Secs. 451–484 of the Stewart B. McKinney Homeless Assistance Act, as amended by Sec. 837 of the Act);

(vii) The Housing Opportunities Program for Persons with AIDS (Secs. 851–863 of the Act);

(viii) The Supportive Housing for the Elderly Program (Sec. 202 of the Housing Act of 1959, as amended by Sec. 801 of the Act; 24 CFR part 869);

(ix) The Supportive Housing for Persons with Disabilities Program (Sec. 811 of the Act, 24 CFR part 890);

(x) The Homeless Housing Assistance Programs (Secs. 411–443 of the Stewart B. McKinney Homeless Assistance Act; see 24 CFR parts 576, 577, 578, 579, and subpart H of part 882); and

(xi) The Community Development Block Grant Programs—Entitlement, Small Cities, States and Special Purpose (Secs. 106 and 107 of the Housing and Community Development Act of 1974, Sec. 905 of the Act; see 24 CFR part 570).

(3) *Programs not covered.* Public Housing and Indian Housing funding (authorized under Title I and II of the United States Housing Act of 1937) is not dependent on the existence of, or a certification of compliance with, an approved housing strategy for the jurisdiction. Section 8 funding is not dependent on the existence of, or certification of compliance with, an approved housing strategy, except for the Section 8 Moderate Rehabilitation

Single Room Occupancy Program (authorized under Section 441 of the McKinney Act). However, HUD funding allocations for the Section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their housing strategies (Sec. 556 of the Act). In addition, one basis for approval of rents for the Section 8 Programs that are higher than 110 percent of the fair market rents for the area based on special local conditions is a HUD determination that implementation of the approved housing strategy for the area requires the higher rents (Sec. 543(b) of the Act).

§ 91.5 Definitions.

*Act.* The Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079).

*Annual update.* A submission by a jurisdiction to HUD in a year in which a complete submission is not required (in accordance with § 91.55(b)), which provides new information for the next year about all the elements required by § 91.15 or § 91.20, as appropriate, including new certifications about fair housing enforcement and relocation assistance (see §§ 91.15(m) and 91.20(m)).

*Certification.* A written assertion, based on supporting evidence which must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

*Complete submission.* A strategy that fulfills the requirements of § 91.15 or § 91.20, as appropriate, with respect to the entire five year period to follow.

*Cost burden.* The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

*Disabled family.* A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration,

(2) Substantially impedes his or her ability to live independently, and

(3) Is of such a nature that the ability could be improved by more suitable housing conditions.

A person shall also be considered to have a disability if he or she has a

developmental disability as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007). The term "disabled family" also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

**Elderly family.** Family in which the head of the household or spouse is at least 62 years of age.

**Family.** A household comprised of one or more individuals.

**Housing.** Includes manufactured housing and manufactured housing lots.

**Housing strategy (CHAS).** A Comprehensive Housing Affordability Strategy prepared in accordance with this part, consisting of either a complete submission or an annual update.

**HUD.** The United States Department of Housing and Urban Development.

**Jurisdiction.** A State or unit of general local government.

**Large families.** Families of five or more persons.

**Large family unit.** Unit of at least three bedrooms.

**Low-income families.** Families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

**Moderate-income families.** Families whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

**Overcrowding.** More than one person per room.

**Participating jurisdiction.** Any State or unit of general local government that has been so designated in accordance with the HOME Program (Title II of the Act).

**Resubmission.** A revised housing strategy submitted to HUD in response to HUD's disapproval of a previous proposed housing strategy.

**Severe cost burden.** The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

**State.** Any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

**Substantial amendment.** A major change in a housing strategy submitted between scheduled annual submissions. It will usually involve a change to the goals or the plan, which may be occasioned by a decision to apply for assistance under a program not previously mentioned in the strategy.

**Unit of general local government.** A city, town, township, county, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, Palau, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with the HOME Program (Title II of the Act); and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to HUD assistance.

**Very-low income families.** Low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

#### § 91.10 Review by courts.

The adequacy of information contained in a housing strategy about a jurisdiction's public policies affecting the affordability of housing shall not be reviewable by any Federal, State, or other court. Review of a housing strategy by any Federal, State, or other court shall be limited to determining whether the process of development and the content of the strategy are in substantial compliance with the requirements of the statute. During the pendency of any action challenging the adequacy of a housing strategy or the action of HUD in approving a strategy, the court shall not have the authority to enjoin activities taken by the jurisdiction to implement an approved housing strategy. Any housing assisted during the pendency of such action shall not be subject to any order of the court resulting from such action.

#### Subpart B—Contents of Strategy

##### § 91.15 Strategy for a unit of general local government.

The comprehensive housing affordability strategy must be submitted in a form that is approved by HUD, and it must contain the following information based on the most recent generally available data:

(a) **Needs data.** A description of the jurisdiction's current needs for housing assistance for very low-income, low-income, and moderate-income families and estimates of needs for the ensuing five-year period for residents and persons expected to reside in the jurisdiction because of employment there. The information: (1) Must include the most recent data published by the U.S. Census Bureau on the structural condition of housing, the extent of overcrowding and cost burden, including severe cost burden, and the extent to which families already receive housing assistance, ownership or rental status, racial and ethnic status, and family type, including elderly families, large families, and single persons; (2) must be presented separately for families requiring supportive services in connection with housing, including disabled families, families who are participating in an organized program to achieve economic independence and self-sufficiency, and persons with acquired immunodeficiency syndrome.

(b) **Homeless assistance needs and strategy.** A description of the nature and extent of homelessness within the jurisdiction, including the estimated number and special needs of homeless persons who are mentally ill, alcohol and drug abusers, runaway or abandoned youth, victims of domestic violence, and other categories that the jurisdiction may specify, with racial and ethnic status indicated, to the extent available. Information on these populations must be organized by whether the persons have a primary nighttime residence that is a shelter or that is a place not ordinarily designed for, or used as, a regular sleeping accommodation for human beings. The description must include a brief inventory of the facilities (including overnight sleeping capacity and occupancy) and services within the various geographic areas that address the needs of homeless persons. The description also must include the jurisdiction's strategy for providing:

- (1) Emergency shelter and services,
- (2) Housing and services for transition to permanent housing and independent living, and

(3) Housing and supportive services for those not capable of achieving independent living.

The strategy also must include a description of the characteristics and special needs of low-income families who are in imminent danger of becoming homeless and an action plan to help these families avoid emergency shelters.

(c) *Market characteristics.* A description of the significant characteristics of the jurisdiction's housing market, indicating how the current and anticipated conditions in the area will influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units. The information must include data on total population, household population, and total housing inventory, to provide context and to assure that trends are accurately represented. Data on the housing inventory must include the ownership or rental status of the units, whether they are occupied or vacant, their structural condition or habitability, their cost and size, and should indicate whether units are suitable for occupancy by elderly families, disabled families, families with children, and any other applicable categories of need identified elsewhere in the housing strategy statement, including any identified special housing needs. The inventory also must include an assessment of the extent of concentration of racial/ethnic minorities and of low-income families in the jurisdiction, along with the locations of these concentrations. Data must be presented separately regarding the use of all government assisted housing and homeless resources already available to address identified needs, such as public housing, Section 8 and Section 235/236 housing, homeless shelters and services, programs of the Farmers Home Administration, and any State or locally funded programs. For all types of assisted housing, information must be provided, to the extent practicable, on the number of units in the program, the number of habitable units, and the number of units occupied as of a recent date, and, with respect to rental housing, whether units are expected to be lost from the assisted housing inventory for any reason, including public housing demolition or conversion to homeownership, or prepayment or voluntary termination of a Federally assisted mortgage.

(d) *Relevant public policies.* An explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing

in the jurisdiction are affected by State or local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. Of particular concern are the policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential investment. The explanation must describe the jurisdiction's strategy to remove or ameliorate any negative effects of these policies, including any effects contributing to concentration of racial/ethnic minorities.

(e) *Institutional structure.* An explanation of the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing strategy. The explanation must assess the strengths and gaps in that delivery system and describe what the jurisdiction will do to overcome those gaps.

(f) *Resources.* An indication of how Federal funds expected to be made available to the jurisdiction in the next year will be used to leverage private and non-Federal public resources that are reasonably expected to be available. This shall include: (1) *Private resources.* A statement of resources from private sources, such as financial institutions, pension funds, foundations and nonprofit organizations, that are reasonably expected to be made available to carry out the purposes of the Act, as stated in § 91.1, and the extent to which they will be used in connection with government funds; (2) *Government resources.* A statement identifying the resources reasonably expected to be made available to the jurisdiction from HUD, other Federal, or State and local governments for rental assistance, homeless assistance, production of new units, rehabilitation of existing units, acquisition of existing units, and any other assistance provided to carry out the purpose of the Act, as stated in § 91.1. These resources will include, where the jurisdiction deems it appropriate, the identification of any publicly owned land or property located in the jurisdiction that may be used to carry out the purposes of the Act.

(g) *Plan.* A statement setting forth the jurisdiction's plan for investment or other use of housing funds and other assistance anticipated under the Title II of the Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the

Stewart B. McKinney Homeless Assistance Act, and other programs covered under this part, during the next year, and over the next five-year period, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs, including family type, income category, and nature of housing problem.

(h) *Intergovernmental cooperation.* A description of the means of cooperation and coordination between the unit of general local government and the State in the development, submission, and implementation of their housing strategies.

(i) *Public housing stock.* A description of the number of public housing units in the jurisdiction, their physical condition, and the restoration and revitalization needs of public housing projects within the jurisdiction. The strategy of the jurisdiction and the public housing agency for improving the management and operation of public housing projects and for improving the living environment of low- and very low-income families residing in public housing must be included.

(j) *Public housing homeownership.* A description of the jurisdiction's activities to encourage public housing residents to become more involved in management and to participate in homeownership.

(k) *Monitoring procedures.* A description of the standards and procedures the jurisdiction will use to monitor activities authorized under the Act and to ensure long-term compliance with the provisions of the Act.

(l) *Fair housing.* A certification that the jurisdiction will affirmatively further fair housing.

(m) *Replacement of low-income housing and relocation assistance.* A certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)), to the extent those requirements are applicable.

(n) *Goals.* A statement of the number of families that will be assisted using funds reasonably expected to be made available from HUD, either alone or in combination with other sources, as identified in accordance with paragraph (f) of this section. Of those families, a statement of the number of families for whom the jurisdiction will provide affordable housing, as defined in the HOME Program, in accordance with section 215 of the Act. Information must be displayed by family type, income

category, nature of housing problem, and need for supportive services.

#### § 91.20 Strategy for a State.

In formulating its housing strategy for the State, the State government must include data covering all areas within the State, both metropolitan and non-metropolitan areas. A State may use a housing strategy prepared by a unit of general local government to cover that portion of the State's jurisdiction, by appending the local government's document to its own, but it is not required to do so. (See § 91.30 concerning coordination of State and local housing strategies.) The housing strategy submitted to HUD by the State must contain the elements that follow. Data on needs for housing assistance (paragraph (a) of this section), for homeless assistance (paragraph (b) of this section), and for market characteristics (paragraph (c) of this section), must be presented by different geographic areas within the State. The data may be presented by metropolitan area, county, unit of general local government, or some combination thereof, such as a recognized planning district. The comprehensive housing affordability strategy must be submitted in a form that is approved by HUD, and it must contain the following information based on the most recent generally available data:

(a) *Needs data.* A description of the jurisdiction's current needs for housing assistance for very low-income, low-income, and moderate-income families and estimates of needs for the ensuing five-year period for residents and persons expected to reside in the jurisdiction because of employment there, by metropolitan and non-metropolitan areas. The information: (1) Must include the most recent data published by the U.S. Census Bureau on the structural condition of housing, the extent of overcrowding and cost burden, including severe cost burden, and the extent to which families already receive housing assistance, ownership or rental status, racial and ethnic status, and family type, including elderly families, large families, and single persons; (2) must be presented separately for families requiring supportive services in connection with housing, including disabled families, families who are participating in an organized program to achieve economic independence and self-sufficiency, and persons with acquired immunodeficiency syndrome.

(b) *Homeless assistance needs and strategy.* A description of the nature and extent of homelessness within the State, including the estimated number and special needs of homeless persons who

are mentally ill, alcohol and drug abusers, runaway or abandoned youth, victims of domestic violence, and other categories that the State may specify, with racial and ethnic status indicated, to the extent available. Information on these populations must be organized by whether the persons have a primary nighttime residence that is a shelter or that is a place not ordinarily designed for, or used as, a regular sleeping accommodation for human beings. The description must include a brief inventory of the facilities (including overnight sleeping capacity and occupancy) and services within the various geographic areas that address the needs of homeless persons. The description also must include the State's strategy for providing:

- (1) Emergency shelter and services,
- (2) Housing and services for transition to permanent housing and independent living, and
- (3) Housing and supportive services for those not capable of achieving independent living.

The strategy also must include a description of the characteristics and special needs of low-income families who are in imminent danger of becoming homeless and an action plan to help these families avoid emergency shelters.

(c) *Market characteristics.* A description of the general characteristics that pertain throughout the State and, to the extent practicable, specific housing market conditions within individual housing market areas that differ from the general characteristics. This description must indicate how the current and anticipated conditions in the various areas will influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units. The information must include data on total population, household population, and total housing inventory, to provide context and to assure that trends are accurately represented. Data on the housing inventory must include the ownership or rental status of the units, whether they are occupied or vacant, their structural condition or habitability, their cost and size, and should indicate whether units are suitable for occupancy by elderly families, disabled families, families with children, and any other applicable categories of need identified elsewhere in the housing strategy statement, including any identified special housing needs. The inventory also must include an assessment of the extent of concentration of racial/ethnic minorities and of low-income families in

the various geographic areas of the State along with the locations of these concentrations. Data must be presented separately regarding the use of all government assisted housing and homeless resources already available to address identified needs, such as public housing, Section 8 and Section 235/236 housing, homeless shelters and services, programs of the Farmers Home Administration, and any State or locally funded programs. For all types of assisted housing, information must be provided, to the extent practicable, on the number of units in the program, the number of habitable units, and the number of units occupied as of a recent date, and, with respect to rental housing, whether units are expected to be lost from the assisted housing inventory for any reason, including public housing demolition or conversion to homeownership, or prepayment or voluntary termination of a Federally assisted mortgage.

(d) *Relevant public policies.* An explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the geographic area of the State are affected by State as well as local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. The State must consider the extent to which its policies are encouraging the removal of barriers to affordable housing. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential investment. The explanation must describe the State's strategy to remove directly or ameliorate any negative effects, as well as to work with the units of general local government involved to remove or ameliorate any negative effects, including effects of local policies contributing to concentration of racial/ethnic minorities. The strategy should consider direct State action, reform of State enabling legislation to remove or ameliorate any negative effects of local policies, encouragement of use of model codes and standards, and provision of technical assistance for local governments.

(e) *Institutional structure.* An explanation of the institutional structure, including private industry, public institutions, such as a State Housing Finance Agency, and non-profit organizations, such as a State-wide non profit organization, through which the State will carry out its housing strategy.

The explanation must assess the strengths and gaps in that delivery system and describe what the State will do to overcome those gaps.

(f) *Resources.* An indication of how Federal funds expected to be made available to the State in the next year will be used to leverage private and non-Federal public resources. This shall include: (1) *Private resources.* A statement of resources from private sources, such as financial institutions, pension funds, foundations and non-profit organizations, that are reasonably expected to be made available to carry out the purposes of the Act, as stated in § 91.1, and the extent to which they will be used in connection with government funds; (2) *Government resources.* A statement identifying the resources reasonably expected to be made available from HUD, other Federal agencies or the State for rental assistance, homeless assistance, production of new units, rehabilitation of existing units, acquisition of existing units, and any other assistance provided to carry out the purposes of the Act, as stated in § 91.1. These resources will include, where the State deems it appropriate, the identification of any Federally or State-owned land or property located in the geographic area that may be used to carry out the purposes of the Act.

(g) *Plan.* A statement setting forth the State's plan for investment or other use of housing funds and other assistance anticipated under the title II of the Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, the Stewart B. McKinney Homeless Assistance Act, and other programs covered under this part, during the next year, and over the next five-year period, indicating the general priorities for allocating investment geographically within the State and among different activities and housing needs, including family type, income category, and nature of housing problems. If the State plans to distribute its funds competitively, it should describe its priorities for distribution and its procedure. The plan must specifically provide for the distribution of assistance to non-metropolitan areas in amounts that take into account the non-metropolitan share of the State's total population.

(h) *Intergovernmental cooperation.* A description of the means of cooperation and coordination between the State and the unit of general local government, and between States if appropriate, in the development, submission, and implementation of their housing strategies.

(i) *Tax credits.* A description of the State's strategy to coordinate the Low-Income Tax Credit with development of housing for which rents are affordable to very low-income and low-income families, as determined in accordance with U.S. tax law.

(j) *Public housing ownership.* A description of the State's activities to encourage public housing residents to become more involved in management and to participate in homeownership.

(k) *Monitoring procedures.* A description of the standards and procedures the State will use to monitor activities authorized under the Act and to ensure long-term compliance with the provisions of the Act, whether administered directly by the State or through a unit of general local government.

(l) *Fair housing.* A certification that the State will affirmatively further fair housing. A similar certification must be required of any unit of general local government to which the State allocates HUD funds.

(m) *Replacement of low-income housing and relocation assistance.* A certification that the State is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)), to the extent those requirements are applicable. A similar certification must be required of any unit of general local government to which the State allocates HUD funds.

(n) *Goals.* A statement of the number of families that will be assisted using funds reasonably expected to be made available within the area from HUD, either alone or in combination with other sources, as identified in accordance with paragraph (f) of this section. Of those families, a statement of the number of families for whom the State will provide affordable housing, as defined in the HOME Program, in accordance with section 215 of the Act. Information must be displayed by family type, income category, nature of housing problem, and need for supportive services.

#### § 91.25 Abbreviated strategy.

A jurisdiction that is not expected to be a participating jurisdiction may submit an abbreviated housing strategy that is appropriate to the types and amounts of assistance sought from HUD. The elements of strategies required under §§ 91.15 and 91.20 must be included except to the extent that they are clearly unnecessary or inapplicable, as determined by HUD. A jurisdiction entitled to receive funds under section

106(b) of the Housing and Community Development Act of 1974 that is not expected to be a participating jurisdiction must submit a strategy containing all of the elements required under § 91.15.

### Subpart C—Coordination and Consultation

#### § 91.30 Coordination of State and local housing strategies.

States and units of general local government that are participating jurisdictions must establish a method of coordinating the development and implementation of their housing strategies. States are encouraged to take a leadership role in convening and coordinating meetings to coordinate efforts to increase the availability of affordable housing. A State may adopt the housing strategy of a unit of general local government as its own for that geographic area of the State, provided that this procedure does not delay the State's submission. A unit of general local government need not seek approval of any elements of its housing strategy by the State government, nor may the State require such approval for purposes of this part.

#### § 91.35 Consultation with social service agencies.

In the preparation of its housing strategy, a jurisdiction must make reasonable efforts to confer with appropriate social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by the agencies.

### Subpart D—Citizen Participation

#### § 91.40 Preparation of housing strategy.

Before submitting a housing strategy under this part, a jurisdiction must—

(a) Make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of the assistance that the jurisdiction may undertake.

(b) Make the proposed housing strategy for the jurisdiction available to the public by publishing a summary of the strategy in an appropriate number of newspapers of general circulation, and by offering copies of the entire strategy itself at an appropriate number of local libraries, local government offices and other appropriate public places. The length of time provided for affected citizens, public agencies, and other interested parties to examine its content

and to submit comments on the proposed housing strategy must be reasonable (at least sixty days, except thirty days in the case of a strategy to be submitted before October 1991).

(c) Hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction. The hearings held on the housing strategy may be combined with other public hearings required in the CDBG programs, provided that the two subjects are treated separately. In the case of a State, there must be an appropriate number of hearings held in various parts of the State to effectively solicit comments from the public affected by the housing strategy.

(d) Provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of any assistance the jurisdiction may have received during the preceding five years.

(e) Consider any comments or views of citizens. A summary of these comments or views must be attached. The submitted housing strategy or substantial amendment must be made available to the public.

**§ 91.45 Substantial amendment to housing strategy or submission of performance report.**

Before submitting any performance report or substantial amendment to a housing strategy under this section, a participating jurisdiction must provide citizens with reasonable notice of, and opportunity to comment on, the performance report or substantial amendment, and it must consider any comments or views of citizens. When a substantial amendment to a housing strategy, or a performance report is submitted, it must include a summary of citizen views received. The amendment or report must be made available to the public.

**§ 91.50 Resolution of citizen complaints.**

A jurisdiction must establish appropriate and practicable procedures to handle complaints from citizens related to the housing strategy or performance reports. At a minimum, the jurisdiction must respond to every written citizen complaint, either orally or in writing, within an established period of time.

**Subpart E—HUD Review and Approval**

**§ 91.55 Submission of housing strategy.**

(a) *General.* A housing strategy (either a complete submission or an annual update) must be submitted annually. To assure eligibility for HUD competitive grant funding and favorable allocation

of Section 8 Program funding, the housing strategy should be submitted by October 31 of each year. It will cover the period from October 1 of that year through September 30 of the following year, unless, because of submission late in a fiscal year, the HUD Field Office approves a longer period that ends on September 30. (During the period from March 6, 1991 until October 31, 1991, a jurisdiction may submit a housing strategy to HUD for approval that covers the period from the date of submission through September 30, 1992.) Before funding for any fiscal year can be approved under a program requiring certification of compliance with an approved housing strategy, the jurisdiction must have submitted a housing strategy that has been approved in accordance with § 91.60.

(b) *Type of submission.* The first time a housing strategy is submitted, it must be a complete submission (as defined in § 91.5). Thereafter, the annual submission may be an annual update, as defined in § 91.5, until five years after the previous complete submission. A complete submission may need to be made more frequently than every five years if a significant change has occurred in the locality's housing market, because of a natural disaster or other factors, or if more recent data or information become available that would have a significant impact on the housing needs assessment and the housing plan. However, if major new census data become available, a complete housing strategy must be submitted. Whenever a complete submission is made, the five-year cycle starts over again.

**§ 91.60 Approval of a strategy.**

(a) HUD will review the housing strategy upon receipt. Any housing strategy will be deemed to have been approved, unless HUD determines, within 60 days after receipt of the strategy, that:

(1) The strategy is inconsistent with the purposes of the Act; or

(2) The information submitted to satisfy the requirements of § 91.15 or § 91.20 is not substantially complete (including consistency with data requirements).

(b) HUD may not disapprove a housing strategy based on the jurisdiction's adoption or continuation of a public policy identified as affecting the availability of affordable housing (in accordance with § 91.15(d) or § 91.20(d)).

**§ 91.65 Actions in case of disapproval of a strategy.**

(a) If HUD disapproves a housing strategy, it will immediately notify the jurisdiction of the disapproval. Not later than 15 days after HUD's communication of the disapproval, the Department must inform the jurisdiction in writing of the following:

(1) The reasons for the disapproval;

(2) The actions that the jurisdiction could take to meet the criteria for approval; and

(3) The time within which amendments to, or the resubmission of, a strategy will be permitted under § 91.70.

(b) If HUD fails to inform the jurisdiction of the reasons for disapproval within the 15-day period, the housing strategy will be deemed to have been approved.

**§ 91.70 Amendment and resubmission of a housing strategy.**

HUD will permit amendments to, or resubmission of, any housing strategy that is disapproved, for a period of 45 days following the date of first disapproval. HUD will approve or disapprove a housing strategy within 30 days after receiving the amendments or resubmission.

**Subpart F—Performance Reports and Reviews**

**§ 91.75 Performance reports.**

(a) *General.* Each jurisdiction that has an approved housing strategy shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its housing strategy. This report must include an evaluation of the jurisdiction's progress in meeting its goal of serving the number of families described in accordance with § 91.15(n) or § 91.20(n). The report must provide information on the number and types of households served, including the number of very low-income, low-income, and moderate-income persons served and the racial and ethnic status of persons served that were assisted with funds made available.

(b) *Submission.* Reports must be submitted no later than October 31 of each year following the year of approval of the first housing strategy, covering the period of October 1 through September 30 of the year just ended.

(c) *Failure to report.* If a jurisdiction fails to submit a report satisfactory to HUD in a timely manner, HUD may take one of the following actions with respect to assistance to the jurisdiction under title II of this Act, the Housing and Community Development Act of 1974, or

the Stewart B. McKinney Homeless Assistance Act:

(1) Suspend assistance until a satisfactory report is submitted to HUD; or

(2) Withdraw and reallocate the assistance if HUD finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report. The hearing must be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. Hearings will be governed by the procedures set forth at 24 CFR part 30, subpart D.

**§ 91.80 HUD performance reviews.**

(a) *General.* HUD must review the activities of each jurisdiction that has an approved housing strategy at least annually to assure that the purposes of the Act, as described in § 91.1, are being carried out. The review must include, insofar as practicable, on-site visits by

HUD and must include an assessment of the jurisdiction's—

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with its housing strategy;

(3) Accuracy in the preparation of performance reports under § 91.80; and

(4) Efforts to ensure that housing assisted under programs administered by HUD are in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD must report to the jurisdiction on its performance review in writing and give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, HUD may revise the report and must make the jurisdiction's comments and the report, with any revisions, readily available to the public

within 30 days after receipt of the jurisdiction's comments.

**Subpart G—Miscellaneous**

**§ 91.99 Waiver authority.**

(a) *Basic provision.* Upon determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any provision of this part. Each such waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

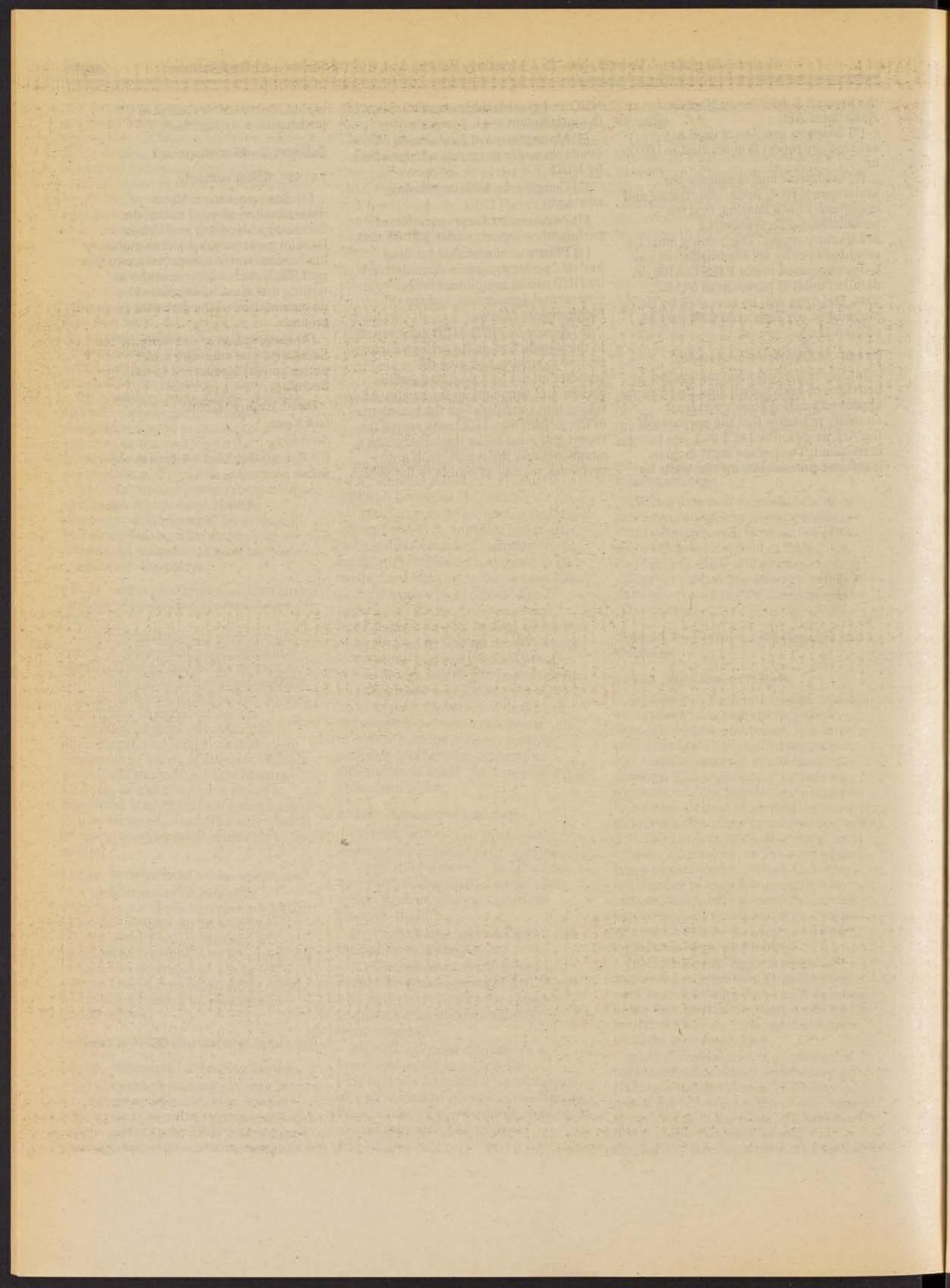
(b) *Reservation of authority by the Secretary.* The authority under paragraph (a) is reserved to the Secretary.

Dated: January 14, 1991.

Jack Kemp,  
Secretary.

[FR Doc. 91-2400 Filed 2-1-91; 8:45 am]

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# Federal Register

Monday  
February 4, 1991

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## Part XIII

### Department of Housing and Urban Development

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24 CFR Subtitle A

Shelter Plus Care Program Guidelines;  
Rule

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Subtitle A**

[Docket No. N-91-3183; FR-2977-N-01]

RIN 2501-AB11

**Shelter Plus Care Program Guidelines**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of program guidelines under 42 U.S.C. 11403 note.

**SUMMARY:** This Notice announces HUD's guidelines, for immediate effect, for the operation of the Shelter Plus Care Program, and invites public comment on the guidelines for consideration in a final rule for the program. The Shelter Plus Care Program was authorized by the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990) to provide rental housing assistance, in connection with supportive services funded from sources other than this program, to homeless persons with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and their families. When Congress appropriates funds for this program, HUD will publish a Notice of Funds Availability with details regarding where to obtain application packages.

**DATES:** Effective date: February 4, 1991.

Comment due date: April 5, 1991.

Those sections of these Guidelines that contain information collection requirements (sections VII and XI) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by the Department in the *Federal Register*.

**ADDRESSES:** Interested persons are invited to submit comments regarding these Guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections XI and XIV should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs,

New Executive Office Building, room 3001, Washington, DC 20303, Attention: Wendy Sherwin, Desk Officer for HUD.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084 or, for the hearing- or speech-impaired, at (TDD) (202) 708-3259. (These are not toll-free numbers.)

**FOR FURTHER INFORMATION CONTACT:**

For general information and information on the S+C/HRHA component, James N. Forsberg, Director, Special Needs Assistance Program, (202) 708-4300 (TDD) (202) 708-2565; on the S+C/SRO component, Madeline Hastings, Director, Moderate Rehabilitation Division, (202) 755-4969 (TDD) (202) 708-4594; and on the S+C/202 component, Robert Wilden, Director, Housing for Elderly and Handicapped People Division, (202) 708-2730 (TDD) (202) 708-4594; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (Telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in sections VII and XI of this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the *Federal Register*.

Public reporting burden for the collection of information requirements contained in this Notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, *Other Matters*. Comments regarding this burden estimate or any other aspect of

this collection of information, including suggestions for reducing the burden, should be sent by March 6, 1991, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Wendy Sherwin, Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements to reflect the public comments on OMB comments received concerning the information collections.

**Editorial Note:** These program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

**I. Introduction**

Section 837 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended title IV of the Stewart B. McKinney Homeless Assistance Act (McKinney Act) by adding subtitle F, which authorizes the Shelter Plus Care (S+C) Program. The program targets assistance to a part of the population of the homeless previously underserved by other McKinney Act programs. The program is designed to link supportive services to rental assistance for homeless persons with disabilities, primarily those who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome (AIDS) and related diseases.

HUD is required under section 452(b) of the McKinney Act (as amended by the NAHA) to reserve, to the maximum extent practicable, not less than 50 percent of all funds for homeless individuals who are seriously mentally ill or have chronic drug or alcohol problems. HUD expects this requirement to be met by the combined effect of selection criteria that will award up to 40 percent of the points for applications proposing to serve persons with those disabilities, and primarily homeless persons whose nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., "street persons").

A nationwide study of the homeless by the Urban Institute in 1987 supports the expectation that these two selection criteria will result in the 50 percent requirement being met. In that study, conducted for the Food and Nutrition Service of the U.S. Department of Agriculture, the Urban Institute

interviewed a sample of homeless using soup kitchens and shelters ("service users") in a representative sample of 20 cities with populations over 100,000. The study also examined those homeless who used neither soup kitchens nor shelters ("non-service users"), although the sample size was smaller and less statistically valid. The study found that there were no families in the non-service users sample—*i.e.*, street persons were homeless individuals. This latter group is generally characterized as street people. The study provided data on the data on both groups. It found that non-service users were much more likely to be mentally ill or have a history of substance abuse. For example, 27 percent of the non-service using homeless had a history of mental hospitalization, as compared to 19 percent of the service using homeless. Almost twice as many of the non-service using homeless are dually diagnosed (*i.e.*, those with both mental illness and substance abuse problems).

After the initial funding round, if HUD finds that the use of the two selection criteria does not result in the 50 percent requirements being met, it will reconsider this approach.

The S+C Program provides rental assistance through three components: (1) A new homeless rental housing assistance program (S+C/HRHA); (2) an expansion of the section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (S+C/SRO); and (3) a program for rental housing assistance under section 202 of the Housing Act of 1959 or its successor program under section 811 of the NAHA (S+C/202). Applicants may apply for assistance under any one of the three components, or a combination. Selection will be on a competitive basis nationwide under selection criteria described in these Guidelines.

Section 455(b) of the McKinney Act, as amended by section 837 of the NAHA, provides that no more than 10 percent of the assistance available for any fiscal year may be used for programs located within any one unit of general local government. Since each component of the S+C Program has a separate appropriation, HUD will limit the amount of assistance any one unit of local government may receive to no more than 10 percent of the amount available for each component program being funded.

HUD will provide rental assistance under the S+C/HRHA and S+C/202 components for a five-year period, and under the S+C/SRO component for a ten-year period. Recipients must match the rental assistance by supportive

services that are equal in value to the aggregate amount of rental assistance and appropriate to the needs of the population to be served.

Recipients must provide housing and supportive services for the full term of the grant. However, recipients may find that some participants do not require supportive services, or the same intensity of supportive services, for the entire grant period. The program is designed to be sufficiently flexible to allow recipients to tailor their programs to the changing housing and services needs of the people served.

Recipients may provide a variety of housing situations, such as group settings or individual units in the community, reflecting a range of care situations from sheltered to independent living. HUD will require applicants in metropolitan areas to request assistance for a minimum of 50 units, and applicants in non-metropolitan areas, 30 units. (In the case of group homes, for this purpose a "resident" is considered a "unit," *i.e.*, a group home for six persons is six units.) In this way, programs will be large enough to justify the time and expense of local coordination and administration, as well as provide a sound basis for evaluation.

Since enactment in 1987, subtitle A of title IV of the McKinney Act (as implemented by HUD at 24 CFR part 90) has required that assistance under title IV could not be provided to or within the jurisdiction of a State or local government unless the jurisdiction had a HUD-approved Comprehensive Homeless Assistance Plan (CHAP) and the applicant had obtained a certification of consistency with the CHAP. Section 105 of the NAHA has created a new planning document for use by States as well as units of general local government—the Comprehensive Housing Affordability Strategy (CHAS). The CHAS incorporates elements of the CHAP and will eventually replace it for almost all jurisdictions. (Indian tribes will not be required to submit a CHAS.)

With respect to many of the programs, including the S+C Program, for which a certification of consistency is required, HUD has the discretion to continue using the CHAP for a period of time. The Department is exercising its authority to provide for a transition from the CHAP until October 31, 1991, so that jurisdictions need not submit a CHAS before October 1991. If funding for the S+C Program becomes available and applications for assistance are submitted before October 31, 1991, a certification of consistency with the CHAP will be sufficient to meet the requirement. HUD will publish an interim rule (24 CFR part 91) in the near

future prescribing the requirements for development of a CHAS, which will be effective for the S+C Program after October 31, 1991.

Other program requirements are described below, as well as descriptions of the three components, details on the submission of applications, selection criteria, and other requirements.

## II. Definitions

For purposes of the S+C Program:

*Acquired immunodeficiency syndrome (AIDS) and related diseases* means the disease of AIDS or any conditions arising from the etiologic agent for AIDS.

*Applicant* means

(1) In the case of rental housing assistance under the S+C/HRHA and S+C/202, a State, unit of general local government, or Indian tribe; and

(2) In the case of S+C/SRO, (i) a State, unit of general local government, or Indian tribe that will be responsible for assuring the provision of supportive services and the overall administration of the program, and (ii) a public housing agency (PHA) that will be primarily responsible for administering the housing assistance under S+C/SRO.

*Eligible person* means a homeless person with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have AIDS and related diseases) and the family of such a person. (In the case of S+C/SRO, only individuals meeting the definition of this paragraph are eligible persons, and not the families of such individuals.) To be eligible for assistance, persons in the S+C/HRHA and S+C/202 components must be very low income, as defined in this section; and individuals in the S+C/SRO component must be low income, as defined in this section, or primarily very low income. Limitations on the percentage of non-very low income individuals assisted in the S+C/SRO component apply consistent with 24 CFR part 813.

*Homeless or homeless individual* includes

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

Low income means an annual income not in excess of 80 percent of the median income for the area, as determined by HUD. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person has a physical, mental, or emotional impairment which—

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care,

treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Notwithstanding the preceding provisions of this paragraph, the term "person with disabilities" includes, except in the case of the S+C/SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under the S+C Program, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under the S+C Program will terminate at the end of the grant period under which the deceased member was a participant.)

Participant means an eligible person who has been selected to participate in the S+C Program.

Public housing agency, or PHA, means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof), including any Indian Housing Authority, which is authorized to engage in or assist in the development or operation of low income housing.

Recipient means an applicant approved for participation in the S+C Program.

Secretary means the Secretary of HUD.

Section 202 sponsor means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, which is approved by HUD as to administrative and financial capacity and responsibility, and which has effective nonprofit tax-exempt ruling under the Internal Revenue Code. "Sponsor" does not mean a public body or the instrumentality of a public body. No officer or director of the Sponsor is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The Sponsor may receive a management fee from the recipient for managing the leased units under the S+C Program.

Seriously mentally ill means having a severe and persistent mental or

emotional impairment that seriously limits a person's ability to live independently.

State means each of the several States, the District of Columbia, and Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means assistance that—

(1) Addresses the special needs of eligible persons; and

(2) Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living.

Inpatient acute hospital care does not qualify as a supportive service.

Supportive service provider, or service provider, means a person or organization licensed or otherwise qualified to provide supportive services. Such a person or organization may provide the services for profit or not for profit.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined 711 of the Housing and Urban Development Act of 1970), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

Very low income means an annual income not in excess of 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are

necessary because of unusually high or low family incomes.

### III. Housing Standards; Rent Reasonableness; Vacancy Payments

#### A. Housing Standards

The housing to be provided must meet the applicable housing quality standards (HQS) under Section 8 of the U.S. Housing Act of 1937 (1937 Act). For housing provided under the S+C/HRHA and S+C/202 components, the HQS are described in 24 CFR 882.109, and for housing provided under the S+C/SRO, in 24 CFR 882.803(b).

Before any assistance will be provided on behalf of a participant, the recipient, or another entity acting on behalf of the recipient (other than the entity providing the housing), must physically inspect each unit to assure that the unit meets the HQS. Assistance will not be provided for units that fail to meet the HQS, unless the owner corrects any deficiencies within 30 days from the date of the lease agreement and the recipient verifies that all deficiencies have been corrected. Recipients will also be required to make physical inspections of all units at least annually during the grant period to ensure that the units continue to meet the HQS.

#### B. Rent Reasonableness

For the S+C/HRHA and S+C/202 components, the recipient must determine whether the rent charged for the unit is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance service of each unit, as well as not in excess of rents currently being charged by the same owner for comparable unassisted units. HUD will not provide assistance for units for which the rent is not reasonable. For the S+C/SRO component, the PHA will calculate a rent for the unit based on cost, in accordance with 24 CFR 882.805(g).

#### C. Vacancy Payments

If a participant vacates a unit before the expiration of the occupancy agreement, no assistance payment may be made for that unit after the month during which it was vacated. No additional assistance will be paid until it is occupied by another eligible person. In programs serving homeless persons, the need for units is such that the owner should be able to fill vacancies quickly, particularly since outreach to potential eligible persons is expected to be an integral part of the S+C Program. (As used in this paragraph, the term

"vacates" does not include brief periods of inpatient care.)

### IV. Supportive Services

To qualify for assistance under the S+C Program, applicants must demonstrate that they will provide or secure supportive services appropriate to the needs of the population being served and at least equal in value to the aggregate amount of rental assistance funded by HUD. The supportive services or funding for the services may be provided by other Federal, State, local, or private programs. Recipients may contract with supportive service providers to furnish the services.

The supportive services must be provided for the entire five-year term of the rental assistance, or, in the case of the S+C/SRO Program, the ten-year term. However, HUD recognizes that the amount of supportive services needed by many participants in a program will be much greater when a participant enters the program, and that the need may diminish as participants become more self-sufficient and the services may not be necessary for the entire period a participant is in the program. The applicant will be required to state the total value of the services, by source, to be provided over the grant period, although the amounts will not necessarily be an equal match to rental assistance on a year-to-year basis.

In calculating the amount of the matching supportive services, applicants may also include: (1) The value of any lease on a building, provided the building is used for the provision of supportive services and the value included in the match is no more than the prorated share used for the S+C Program; (2) salaries paid to staff of the recipient (except PHA recipients under the S+C/SRO component) to carry out the S+C Program; and (3) the value of supportive services provided by other persons or organizations to participate in the S+C Program. The value of time and services contributed by volunteers to the program may also be included at the rate of \$5.00 an hour.

If the supportive services and funding for the services are not provided substantially in accordance with the recipient's description of the nature, source, and timing of such aid, HUD may recapture any unexpended housing assistance.

### V. Rent Payments; Occupancy Agreements; Termination of Assistance

#### A. Rent Payments by Participants

Participants in the S+C Program must pay rent in accordance with section 3(a)(1) of the 1937 Act. Although most

homeless persons may not have an income when they enter the S+C Program, it is not unreasonable to expect that, through the supportive services, many would at some point become gainfully employed or would be receiving income support payments (e.g., Supplemental Security Income or State equivalent). Under section 3(a)(1), each participant must pay the highest of: (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses); (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same as if the person were being assisted under title XVI of the Social Security Act. Detailed information with respect to calculating income for rent determination is contained in 24 CFR 813.106.

Recipients must examine the participant's income initially to determine the amount of rent payable by the participant. Recipients must also reexamine a participant's income in accordance with 24 CFR 813.109 at least annually during the period of time the participant is receiving rental assistance, and make any adjustments to the participant's rental payment as necessary. Participants should be required to provide the recipient information at any time regarding subsequent employment.

For the S+C/SRO component, these responsibilities are specified in 24 CFR 882.808, and for the S+C/202 component, in 24 CFR 885.950. For the S+C/HRHA component, the recipient must require, as a condition of participation in the program, that each participant agree to supply such certification, release, information, or documentation as the recipient determines necessary to verify the participant's income.

#### B. Participant Occupancy Agreements

Participants in the S+C Program must execute an initial occupancy agreement with the recipient or the entity providing the housing for a term of at least one month, automatically renewable upon expiration, except on prior notice. Other

HUD programs require such agreements for one-year periods. However, this requirement is believed to be inappropriate for the S+C Program because of the characteristics of the homeless population to be served. An agreement to occupy the unit for at least a month, however, is not unreasonable, and will help to create a sense of commitment to the program.

The occupancy agreement may include provisions not normally included in a standard lease agreement. For example, the agreement should provide that the tenant must participate in the supportive services provided through the S+C Program as a condition of continued occupancy. Assistance to participants who violate S+C Program requirements or the occupancy agreement may be terminated in accordance with requirements described below.

#### *C. Termination of Assistance to Participants*

Assistance to participants in a S+C Program may be terminated if the participant violates program requirements or conditions of occupancy. However, recipients should exercise judgment in determining when violations are serious enough to warrant termination. For example, for one of the target groups—substance abusers—relapse is a common occurrence, with many failing repeatedly before they finally succeed. Similarly, seriously mentally ill persons may demonstrate inappropriate behavior requiring clinical intervention. Recipients will be expected to do as much as possible to ensure the adequacy of supportive services so that a participant's assistance is terminated only in the most severe cases, as stated in the occupancy agreement. Even after termination, recipients should attempt to bring the person back into the program.

In terminating assistance to any program participant, recipients must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must consist of: (1) Serving the participant with a written notice containing a clear statement of the reasons for termination; (2) a review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and (3) prompt written notification of the final decision to the participant.

## **VI. Outreach**

Recipients are required to use their best efforts to obtain the participation of eligible persons who have previously not been assisted under programs designed to assist the homeless or have been considered not capable of participation in these programs. These efforts should be primarily directed toward eligible persons who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings ("street persons").

## **VII. Environmental Matters**

### *A. Environmental Review*

The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in 24 CFR part 58. Section 443 of the McKinney Act provides that the regulations and procedures applicable under section 104(g) of the Housing and Community Development Act of 1974 are to be applied to programs under Title IV of the McKinney Act. Section 104(g) authorizes HUD to assign the Federal environmental responsibilities to grantees deemed to have the legal capacity for environmental review (States, metropolitan cities, urban counties, and other units of general local government) and to define how the responsibilities are to be performed. Part 58 describes the requirements for grantees that assume the responsibilities.

With the exception of PHAs, all applicants under the S+C Program have the legal capacity for environmental review under section 104(g), and HUD believes that the objectives of the S+C Program can best be served by a consolidation of environmental review responsibilities at the applicant level. Therefore, applicants will be required to assume the responsibility for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58. PHAs do not have the legal capacity for environmental review under section 104(g); however, co-applicants of PHAs under the S+C/SRO component (*i.e.*, States, units of general local governments, or Indian tribes) will be required to assume the responsibility for environmental review.

HUD will approve applications subject to the completion of environmental reviews within a reasonable time after selection for

funding. An assurance that the applicant will assume all environmental review responsibility, including acceptance of jurisdiction of the Federal courts, must be included in the application.

Applicants may adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done). Applicants that adopt such relevant and adequate prior reviews may include the environmental certification and Request for Release of Funds with their applications.

### *B. Location in Floodplain*

Applications for rental assistance for housing that will be located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, *Floodplain Management* (May 24, 1977). Executive Order 11988 review, as referenced under part 58, is to be performed during the environmental review.

Any intermediate care facilities for the mentally retarded and individuals with related conditions must be treated as "critical actions" under Executive Order 11988, and require consideration of any 500-year floodplain, as required under 24 CFR 885.740(b).

## **VIII. Nondiscrimination and Equal Opportunity**

### *A. General*

Recipients may establish a preference as part of their admissions procedures for one or more of the statutorily targeted populations (*i.e.*, seriously mentally ill, alcohol or drug abusers, or persons with AIDS and related diseases). However, other eligible disabled homeless persons must be considered for housing designed for the target population unless the recipient can demonstrate that there is sufficient demand by the targeted group for the units, and other eligible disabled homeless persons would not benefit from the primary supportive services provided.

### *B. Compliance With Requirements*

Recipients serving a designated population of homeless persons must, within the designated population, comply with the following requirements for nondiscrimination on the basis of

race, color, religion, sex, national origin, age, familial status, and handicap:

1. *Fair Housing Requirements.* The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

2. *Discrimination on the Basis of Age or Handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

3. *Employment Opportunities.* The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection With Assisted Projects).

4. *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

5. *Affirmative Outreach.* If the procedures that the recipient intends to use to make known the availability of the S+C Program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the assistance.

6. *Disability Requirements—Fair Housing Act and Section 504.* The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended.

## IX. Other Federal Requirements

### A. OMB Circulars

The policies, guidelines, and requirements of 24 CFR part 85 (as codified pursuant to OMB Circular No. A-102 and OMB Circular No. A-87)

apply to the acceptance and use of funds under the program by recipients. Recipients are also subject to the audit requirements described in 24 CFR part 44.

### B. Drug-Free Workplace

Under Section 401 of the McKinney Act, recipients are required to administer, in good faith, a policy designed to ensure that homeless facilities are free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients must also certify that they will provide a drug-free workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

### C. Anti-Lobbying Certification

Section 319 of Public Law 101-121 prohibit recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). The rule requires applicants, recipients, and subrecipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants, recipients, and subrecipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

### D. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

### E. Conflict of Interest

In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to

such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

### F. Displacement, Relocation and Acquisition

The recipient must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implementing regulations at 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

## X. Components

### A. Homeless Rental Housing Assistance (S+C/HRHA)

The S+C/HRHA component provides grants to be used for rental assistance in accordance with a flexible housing plan to be developed by the applicant to fit the needs of the homeless population to be served. Rental assistance will be provided for a five-year period.

The amount of rental assistance provided to an applicant will be based on the number and type of units proposed to be assisted for the five-year period. The grant per unit may not exceed the appropriate Section 8 Fair Market Rent (FMR) for Existing Housing in effect for the area at the time the application is approved, including any exceptions based on unit size approved by HUD under 24 CFR 882.106(a)(3). (HUD publishes a schedule of FMRs annually on or before October 1 to take effect on that date. The relation between the FMRs and the type of unit is explained in 24 CFR 882.106. Instructions on calculating the amount of assistance using the FMRs as the basis will be included in the application package.) Assistance for the individual tenant (participant) will be in the form of rental assistance payments equal to the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. The rent may not exceed the FMR, as described above.

Subject to availability and on demonstration of need, up to 25 percent of the total rental assistance awarded may be spent in any one of the five years, or a higher percentage if approved by HUD, where the applicant provides evidence satisfactory to HUD that it is financially committed to

providing the housing assistance described in the application for the full five-year period. Any amounts not needed for a year during the grant period may be used to increase the amount available in subsequent years.

Applicants must give assurance that the assistance provided by HUD, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the grant, or that applicants will provide any shortfall, if necessary.

Recipients under the S+C/HRHA component may contract with a PHA or other entity approved by HUD to administer the housing assistance. Up to seven percent of the amount of assistance awarded may be used to pay the costs of administering the housing assistance.

S+C/HRHA recipients may offer participants a variety of housing types, such as group homes or independent living units. Group homes may not serve more than 15 persons on one site, and independent living units for seriously mentally ill persons no more than 20 persons on one site.

Rental assistance under this component may not be used for units that are currently receiving Federal funding under other HUD programs.

Where it is necessary to facilitate coordination of supportive services and housing, a recipient may require that a participant live within a particular area of the locality for the period of participation, or may require a participant to live in a particular structure or unit during the first year and a particular area the remainder of the time.

Each recipient under the S+C/HRHA component must develop, and make available to the public, its procedures for managing the rental housing assistance funds provided by HUD. At a minimum, such procedures must describe how eligible homeless persons will be selected to participate in the program; how they will be placed in, or assisted in finding, appropriate housing; to whom, and under what conditions, rental housing assistance will be paid; and what safeguards will be used to prevent the misuse of these funds.

*B. Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (S+C/SRO)*

HUD's current Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (Mod Rehab SRO-Homeless) was authorized by section 441 of the McKinney Act to provide rental

assistance for homeless individuals in rehabilitated SRO housing. The Mod Rehab SRO-Homeless Program provides funds under an Annual Contributions Contract (ACC) to local PHAs to make rental assistance payments to participating owners of rental property on behalf of homeless individuals who rent rehabilitated SRO housing units. PHAs are responsible for selecting properties that are suitable for assistance and for identifying landlords who are willing to participate. PHAs then enter into a formal agreement with the property owner to make any repairs and improvements necessary to meet HUD standards and local fire and safety requirements. Although HUD does not provide financing for the actual rehabilitation, the cost of rehabilitation can be reflected in the contract rents, which are calculated by the PHA and include the costs of owning, managing, and maintaining the property.

The regulations governing the Mod Rehab SRO-Homeless Program are set forth in 24 CFR part 882, subpart H. Those regulations will also govern the S+C/SRO component, except where they conflict with any requirements of the S+C Program described in this Notice.

Property eligibility requirements are described in 24 CFR 882.803(a). Under § 882.803(a)(2)(ii), property owned by a PHA administering the ACC is ineligible for assistance. Section 548 of the NAHA lifted the bar on PHA ownership of units assisted under section 8. However, the Department believes that section 548 cannot be implemented without regulatory guidance, which is being developed in the context of another rule. Since the Department does not anticipate publication of a rule implementing section 548 before the end of Fiscal Year 1991, units owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided will not be eligible in any program funded in Fiscal Year 1991.

Assistance under the S+C/SRO component will be in the form of rental assistance payments, which equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. Maximum gross rents for SRO units are established at 75 percent of the 0-bedroom Moderate Rehabilitation FMR, which is 120 percent of the Section 8 Existing FMR. The contract will provide for rental assistance for a period of 10 years, and will also provide the Secretary with an option to renew the contract for an additional period of 10 years, subject to the availability of authority.

SRO housing is defined in section 8(n) of the 1937 Act and in 24 CFR 882.802 as a dwelling unit that is not required to contain food preparation or sanitary facilities. Section 471 of the McKinney Act, as amended by section 837 of the NAHA, provides that S+C/SRO assistance may also be used in connection with the moderate rehabilitation of efficiency units, if the building owner agrees to pay the additional cost of rehabilitating and operating the efficiency units. The HQS contained in the Mod Rehab SRO-Homeless rule, set forth in § 882.803(b), also apply to units assisted under S+C/SRO.

Unlike the Mod Rehab SRO-Homeless Program in which PHAs are the only eligible applicants, in the S+C/SRO component, a State, unit of general local government, or Indian tribe must be a joint applicant with the PHA. The governmental entity will be responsible for assuring the provision of supportive services and the overall administration of the program, while the PHA will be primarily responsible for administering the housing assistance.

Upon approval of an application, the Annual Contributions Contract (ACC) would be, as under Mod Rehab SRO-Homeless, between HUD and the PHA. There will also be a contract between HUD and the governmental entity to administer the overall S+C/SRO component and ensure the provision of supportive services described in the application.

Under the Mod Rehab SRO-Homeless Program, there is no requirement that homeless individuals have disabilities. Under the S+C/SRO component, however, participation is limited to homeless individuals with disabilities, especially individuals who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have AIDS and related diseases.

The MOD Rehab SRO-Homeless Program requires that a PHA establish a waiting list and fill vacant units with persons from the waiting list. Due to the special nature of the population to be served and the outreach requirements under the S+C/SRO component, PHAs will not be required to maintain a waiting list for the S+C/SRO component.

*C. Section 202 Rental Assistance (S+C/202)*

Section 481 of the McKinney Act, as amended by section 837 of the NAHA, authorizes assistance under this component to be provided in connection with rental assistance under section 202 of the Housing Act of 1959 or its

successor program under section 811 of the NAHA for very low-income eligible persons. Under the S+C/202 component, assistance for the tenant (participant) will be in the form of rental assistance payments equal to the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. The rent may not exceed the FMR, as described below.

Upon approval of an application, HUD will enter into a contract with the State, unit of local government, or Indian tribe that is the recipient. The contract will require the governmental entity to administer the overall S+C/202 component, ensure the provision of supportive services described in the application, and enter into a contract with the owner or lessor of housing meeting the requirements of section 202 of section 811, as appropriate. Owners and lessors must meet the qualifications of section 202 Sponsors, as defined in this Notice. Each applicant for the S+C/202 component must involve not more than one section 202 Sponsor due to the small size of the S+C/202 component.

The program regulations governing section 202 Projects for Nonelderly Handicapped Families and Individuals are set forth at 24 CFR part 885, subpart C. Where those regulations are in conflict with the requirements or definitions of the S+C Program (e.g., persons eligible for assistance), the provisions of the S+C Program contained in this Notice must be followed.

Under the Section 202 Nonelderly Handicapped Program, persons whose sole impairment is drug or alcohol addiction are not eligible for rental assistance. Under the S+C/202 component, however, homeless persons with a chronic problem with alcohol or drugs may be considered disabled and eligible for assistance as long as they meet the three-part test in the definition of "person with disabilities."

S+C/202 rental assistance will be provided for a period of five years for housing in group homes or independent living units, as described in § 885.700. Group homes may not serve more than 15 persons on one site, and independent living units for seriously mentally ill persons, no more than 20 persons on one site. Owners or lessors of the housing must qualify as section 202 Sponsors under the definition contained in this Notice.

The amount of the assistance reserved in the contract with the applicant will be based on the number and type of units to be assisted, and may not exceed the appropriate section 8 Existing Housing FMRs for such units (including any

exceptions based on unit size approved by HUD under 24 CFR 882.106(a)(3) in effect at the time the application is approved. (HUD publishes a schedule of FMRs annually before October 1 to take effect on that date. The relation between the FMRs and the type of unit is explained in 24 CFR 882.106. Instructions for calculating the amount of assistance necessary based on FMRs will be included in the application package.)

Applicants must provide assurance that the assistance provided by the Secretary, and any amounts provided from other sources, will be managed so that housing assistance described in the application is provided for the full five years.

Up to seven percent of the amount of assistance awarded may be used to pay the Sponsor for administering the housing assistance.

#### XI. Application Requirements

At a minimum, applications must contain:

1. *Applicant data.* Description of ongoing programs conducted by the applicant and its contractors, and any past experience with similar programs.

2. *Assistance requested.* The type of housing assistance requested (i.e., S+C/HRHA, S+C/SRO, S+C/202, or a combination), the number and bedroom size of units requested, and the dollar amount of assistance requested.

3. *Population to be served.* A description of the size and characteristics of the population of eligible persons to be served.

4. *Need for program.* Identification of the need for the program in the community to be served.

5. *Program plan.* A plan for:

(a) Identifying and selecting eligible persons to participate, including the applicant's proposed definition of the term "chronic problems with alcohol or other drugs," if homeless persons with substance abuse problems will be served;

(b) Obtaining participation of eligible persons most in need, primarily persons who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings ("street-persons").

(c) Coordinating the provision of housing assistance and supportive services;

(d) Ensuring that the supportive service providers are providing a continuum of supportive services adequate to meet the changing needs of the persons served; and

(e) Developing individualized housing and supportive services programs for participants and for monitoring each

participant's program toward achieving identified goals.

6. *Supportive services.* A description of the supportive services that the applicant will make available for the population to be served; a description of the accessibility of the supportive services to the housing to be provided; the identity of the proposed supportive service providers (which may be, or include, the applicant) and the qualifications of the providers; the management and staffing plans of the providers with respect to the supportive services to be provided; a description of the matching resources that are expected to be available to provide the supportive services; reasonable assurances that the supportive services will be available for the full term of the housing assistance requested; and a certification from the applicant that it will fund the supportive services itself if the planned resources do not become available for any reason.

7. *Housing.* (a) In the case of rental assistance under S+C/HRHA, a description of the type, size, and general location of the housing to be provided; an explanation of how the housing will meet the changing needs of the population to be served; and identification of the entity or entities that will administer the housing assistance. When the recipient proposes to require participants to live in particular structures or units, and/or particular areas of the locality, an explanation of the reasons why such structures, units, or areas have been selected. If not yet selected, an explanation of the procedures that will be followed in selecting specific structures, units, or areas.

(b) In the case of rental assistance under S+C/SRO, an explanation of how the housing meets the needs of the population to be served; identification of the PHA; identification of the specific structures that the applicant is proposing for rehabilitation and assistance and a demonstration that the property is eligible under 24 CFR 882.803(a); evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule; a feasibility analysis, which includes information on the amount and type of rehabilitation proposed, preliminary rent calculations in accordance with Mod Rehab program requirements, and the anticipated source of financing; assurance that the project will not result in displacement; demonstration that the project meets site and neighborhood standards; the number of vacant units and the number of total units; and a

schedule for the rehabilitation and occupancy of the project. In addition, for applications requesting assistance under the S+C/SRO component, Section 102(b) of the HUD Reform Act (Pub. L. 101-235, enacted December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the project and parties with a pecuniary interest in the project, and submission of a report on expected sources and uses of funds to be made available for the project. Each application must include information to be required by 24 CFR part 12, the regulation that will implement Section 102 of the Reform Act. (HUD expects to publish part 12 as a final rule before the deadline that will be established for the submission of S+C applications.)

(c) In the case of rental assistance under S+C202, an explanation of how the proposed housing meets the needs of the population to be served; description of the process used to select the section 202 Sponsor; identification of the section 202 Sponsor that will be the owner or lessor of the property; and identification of the specific structures in which the Sponsor proposes to house eligible persons.

8. *CHAP or CHAS certification.* For applications submitted before October 31, 1991: A certification by the public official responsible for submitting the Comprehensive Homeless Assistance Plan (CHAP) for the appropriate jurisdiction, required under section 401 of the McKinney Act and described in 24 CFR part 90, stating that the proposed activities are consistent with the Plan. For applications submitted after October 31, 1991: A certification by the public official responsible for submitting the Comprehensive Housing Affordability Strategy, required under section 105 of the Cranston-Gonzalez National Affordable Housing Act and described in 24 CFR part 91, stating that the proposed activities are consistent with the approved housing strategy of the unit of general local government within which rental assistance will be provided.

9. *Other.* Other certifications, information, or data prescribed by HUD in the application package.

## XII. Selection Process

The selection process for rental assistance under the S+C Program will consist of the following stages:

### A. Threshold Review

Applications must meet certain threshold requirements before they are eligible for ranking under the selection criteria described in this Notice. The

first level of threshold review, which will apply to all applications, will determine whether the application is adequate in form, time, and completeness, whether the applicant and the population to be served are eligible, and whether the proposed supportive services are cost effective and at least equal in value to the assistance requested, and whether the limitations on the number of persons who may be served on one site under the S+C/HRHA and S+C/202 components have been met. Applications for S+C/SRO and S+C/202 will then be reviewed further to determine whether they meet other threshold requirements for those components. In an application contains a request for assistance for more than one component, and one (or more) of the components fails to meet the threshold requirements, the remainder of the application will go forward in the process to the ranking stage. Applicants must indicate if services are linked to a specific component, so that, if that component fails under the threshold review, HUD can assess the feasibility of the program.

1. *Threshold requirements for all applications.* (a) *Form, time, and adequacy.* Applications must be filed in the form prescribed by HUD in the application package and within the time established in the Notice of Funds Availability. Applications must contain all applicable certifications described in this Notice and in the application package (e.g., CHAP, Drug-Free Workplace, environmental, anti-lobbying).

(b) *Applicant eligibility.* The applicant must be eligible under the S+C Program.

(c) *Eligible population to be served.* The population proposed to be served by the applicant must be eligible persons under the S+C Program.

(d) *Matching.* The value of the proposed supportive services must be equal in value to the requested rental assistance.

2. *Threshold requirements, for S+C/SRO applicants.* In addition to the above requirements, applicants for assistance under the S+C/SRO component must show:

(a) *PHA eligibility.* The application must demonstrate that the co-applicant is a PHA.

(b) *Site control.* The application must identify the specific structure proposed to be rehabilitated and assisted, and demonstrate evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule.

(c) *Feasibility.* The application must demonstrate that a preliminary estimate of the gross rents for the structure, calculated in accordance with Mod Rehab program requirements, indicate that the project is feasible within the FMR limitation. The feasibility analysis must include information on the rehabilitation proposed for the structure and must address the availability and type of financing to be used.

(d) *Eligible property.* The application must demonstrate that the property proposed to be used meets the SRO regulatory definition at 24 CFR 882.803(a); and that the units to be assisted are currently vacant. "Currently vacant" means that the unit is not occupied on and after the date of the application.

(e) *Rehabilitation costs.* The application must demonstrate that the rehabilitation costs are within the minimum limitation of \$3,000 per unit and the maximum limitation of \$15,000 per unit.

(f) *Site and neighborhood standards.* The application must demonstrate that the project is in compliance with HUD's site and neighborhood standards, described in 24 CFR 882.803(b)(4).

(g) *Completion schedule.* The application must demonstrate that the rehabilitation and occupancy of the project will be completed within 12 months from the date of execution of the ACC.

(h) *Disclosure under Reform Act.* The application must contain a disclosure of other information concerning other government assistance to be made available with respect to the project and parties with a pecuniary interest in the project, and a report on expected sources and uses of funds to be made available to the project, in accordance with Section 102(b) of the HUD Reform Act. HUD expects to publish a final rule implementing section 102(b) (24 CFR part 12) before any application deadline is established for the S+C Program.

3. *Threshold requirements for S+C/202 applicants.* In addition to the four threshold requirements for all applications, applicants for assistance under the S+C/202 component must show:

(a) *Selection of sponsor.* The application must demonstrate that the process used to select the sponsor was reasonable and equitable.

(b) *Sponsor experience.* The application must demonstrate that the Sponsor has previous experience in the development and/or operation of housing and/or the provision of supportive services related to the needs of the homeless population to be served.

(c) *Sponsor financial stability.* The applicant must demonstrate that the Sponsor has sufficient financial stability to continue in business for the duration of the rental assistance contract.

(d) *Sponsor qualifications.* The application must demonstrate that the Sponsor meets the qualifications of a private nonprofit sponsor as required under the section 202 Program.

#### B. Rating

Applications that fulfill each of the threshold requirements described above will be rated based on the selection criteria described in section XIII of these Guidelines, and placed in ranked order. Successful applicants will be expected to receive points in criteria A, B, and C.

In cases where the applicant requests assistance under more than one S+C component, the components will not be separately rated. Rather the application will be rated as a whole. However, in assigning points in such cases, HUD will consider the relative importance of each component (such as the number of persons to be served and the nature, extent, and location of the supportive services to be provided under each component) to the likely success of the overall program.

#### C. Final Selection

In the final stage of the selection process, the highest-rated applications will be considered for final selection in accordance with their ranked order, to the extent funds are available for the component or components requested. If funds are unavailable for one or more requested components, only those for which funds are available will be funded. Section 455(a)(2) of the McKinney Act, as amended by the NAHA, includes geographic diversity as one of the selection criteria. In order to achieve geographic diversity, HUD will determine, after applications are rated and ranked under the selection criteria, whether each of the four Census Regions contains at least one fundable application. If not, HUD will substitute the highest ranked applications in the necessary Census Region for applications at the bottom of the list of tentatively selected projects.

Before notifying an applicant of its selection for an award of assistance under the S+C/SRO component, HUD will certify that the amount of the grant being approved is not more than necessary to provide affordable housing, as required by section 102 of the HUD Reform Act and in accordance with 24 CFR part 12.

### XIII. Selection Criteria

Applications remaining in competition after the initial threshold review will be rated and ranked under the following selection criteria:

#### A. Capability of Applicants

HUD will award up to 100 points based on the ability of the applicant, either directly or through contractors, to develop and operate the proposed assisted housing and supportive services program. HUD will consider such factors as the quality of any ongoing programs of the applicant; the past experience of the applicant in programs serving the homeless, particularly the population to be served by the proposed program; the management and staffing plans of the applicant; and other factors relevant to the applicant's ability.

#### B. Need for the Program in the Community

HUD will award up to 100 points based on a demonstration of the need for housing assistance and supportive services for eligible persons proposed to be served by the program in the community, particularly the hard-to-reach homeless. HUD will consider the extent to which the applicant demonstrates that an unmet need exists through data such as surveys of local homeless populations and other means of demonstrating the need for the program.

#### C. Appropriateness of Housing and Supportive Services

HUD will award up to 300 points based on the appropriateness of the proposed assisted housing and supportive services. HUD will consider the degree to which proposed housing and services are targeted to specific needs of the population to be served, the comprehensiveness of the plan in providing a continuum of housing and services to meet the changing needs of the target population, the qualifications of the service providers, and the appropriateness of any restrictions on where participants may live.

#### D. Assimilation of Participants Into Community

HUD will award up to 100 points based on the extent to which the program assimilates participants into the community. HUD will consider locations for housing and supportive services and any plans the applicant has for helping participants gain access to neighborhood activities, services, and institutions.

#### E. Service to Hard-to-Reach Homeless Persons

HUD will award up to 200 points based on the extent to which the program will serve both homeless persons who spend nights in public or private places not designed for, or ordinarily used as, regular sleeping accommodations for human beings (i.e., street persons) and those who reside in emergency shelters. HUD will consider the plans the applicant has for outreach to this population and for efforts to encourage them to remain in the housing. In awarding the maximum number of points under this criterion, HUD will give consideration to both the quality of the plan and the extent to which street persons will be served.

#### F. Service to Targeted Disabilities

HUD will award up to 200 points based on the extent to which the program will serve persons who are seriously mentally ill, or have chronic problems with alcohol, drugs, or both, or have AIDS and related diseases.

### XIV. Grant Agreement

The grant agreement will be between HUD and the recipient. HUD will hold the recipient responsible for the overall administration of the S+C Program, including overseeing any contractors. The grant agreement will provide that the recipient agrees:

- To operate the program in accordance with the provisions of these Guidelines and applicable HUD regulations;
- To conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;
- To assure the adequate provision of supportive services to the participants in the program; and
- To comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants), as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner.

HUD will enforce the obligations in the grant agreement through such action as may be necessary, including recapturing assistance awarded under the program.

### XV. Obligation and Deobligation of Funds

Upon approval of an application for funding and notification to the applicant, HUD will obligate funds to cover the amount of the approved assistance. After the initial obligation of funds for

S+C/HRHA and S+C/202, HUD will not make any upward revisions to the amount obligated for any approved assistance.

HUD may deobligate all or a portion of the amounts approved for rental assistance if the proposed housing for which funding was approved or the supportive services proposed in the application are not provided in accordance with the approved application and the requirements of these Guidelines. The grant agreement may set forth other circumstances under which funds may be deobligated, and other sanctions may be imposed.

HUD may readvertise the availability of funds that have been deobligated in a notice of fund availability, or may

reconsider applications that were submitted in response to the most recently published Notice of Funds Availability and select applications for funding with the deobligated funds. Such selections would be made in accordance with the selection process described in these Guidelines. Any selections made using deobligated funds will be subject to applicable appropriation act requirements governing the use of deobligated funding authority.

#### XVI. Waivers

The Secretary may waive any requirement in this Notice that is not required by law, whenever it is determined that undue hardship will

result from applying the requirement, or where application of the requirement would adversely affect the purposes of the S+C Program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers in the *Federal Register*.

#### XVII. Other Matters

The collection of information requirements for this program were submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

| Description              | Number of rspndnts. | Responses/ per rspndnt. | Total ann. responses | Hours/ response | Total hrs. |
|--------------------------|---------------------|-------------------------|----------------------|-----------------|------------|
| S+C/HRHA:                |                     |                         |                      |                 |            |
| Application.....         | 200                 | 1                       | 200                  | 40              | 8,000      |
| Env. review.....         | 75                  | 1                       | 75                   | 14              | 1,050      |
| S+C/SRO:                 |                     |                         |                      |                 |            |
| Application.....         | 100                 | 1                       | 100                  | 40              | 4,000      |
| Env. review.....         | 15                  | 1                       | 15                   | 14              | 210        |
| S+C/202:                 |                     |                         |                      |                 |            |
| Application.....         | 100                 | 1                       | 100                  | 40              | 4,000      |
| Env. review.....         | 15                  | 1                       | 15                   | 14              | 210        |
| Total annual burden..... |                     |                         |                      |                 | 17,470     |

These guidelines would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451

Seventh Street SW., Washington, DC 20410.

These guidelines were listed in the Department's Semiannual Agenda of Regulations published at 55 FR 44530 on October 29, 1990, under Executive Order 12291 and the Regulatory Flexibility Act.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in these guidelines will have a potential significant impact on the formation, maintenance, and general well-being of the family. Participation of homeless families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provision in these guidelines requiring

applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities has Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that these guidelines would not have a significant economic impact on a substantial number of small entities. They would govern the procedures under which HUD would make rental assistance available to applicants under a program designed to house and provide supportive services to homeless persons with disabilities.

Dated: January 28, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-2405 Filed 2-1-91; 8:45 am]

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# **federal register**

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**Monday  
February 4, 1991**

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**Part XIV**

**Department of  
Housing and Urban  
Development**

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**Office of the Secretary**

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**HOPE for Elderly Independence Program  
Guidelines; Notice**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Secretary**

[Docket No. N-91-3195; FR-2957-N-01]

RIN 2501-AB05

**HOPE for Elderly Independence  
Program Guidelines**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of program guidelines under 42 U.S.C. 8012.

**SUMMARY:** This Notice provides HUD's guidelines, for a national competition, to implement the HOPE for Elderly Independence Demonstration Program (Elderly Independence demonstration). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) The Elderly Independence demonstration is a five-year program authorized by section 803 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990). The purpose of this demonstration is to test the effectiveness of combining tenant-based rental housing certificates and rental vouchers with supportive services to assist frail elderly people living in the general community who are not receiving rental subsidies and who currently require this combined assistance to remain living independently, and avoid premature or unnecessary institutionalization.

The authorizing legislation provides that requirements for the Elderly Independence demonstration are to be established by publication of a notice. Although the Guidelines will be effective upon publication, the Department nevertheless invites public comment to assist in developing rules in the event that the Elderly Independence demonstration becomes a permanent program. Should serious concerns about the program arise in the comments or during the operation of the first year of the demonstration, a revised Notice will be published to provide guidance for the second round of funding. (The authorizing legislation also provides for implementation of a single multifamily project demonstration in one Federal region. Guidelines for this program will be presented in a separately published notice.)

When Congress appropriates rental certificates, rental vouchers and supportive services funds for this program, HUD will publish a Notice of Fund Availability (NOFA) that will provide potential applicant agencies with details regarding where to obtain

application packages. The NOFA will specify whether the Elderly Independence demonstration will utilize rental certificates or rental vouchers and will establish appropriate deadlines and other requirements for submission of applications.

**DATES:** Effective date: February 4, 1991. Comment due date: April 5, 1991.

Interested persons are invited to submit comments regarding these guidelines to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer TOTAL pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of SIX pages will NOT be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084. Hearing-impaired individuals may reach the Rules Docket Clerk by calling the TDD number, (202) 708-3259. (These are not toll-free numbers.)

**FOR FURTHER INFORMATION:** For general information concerning the supportive services component of the Elderly Independence demonstration, contact Jerold S. Nachison, Housing for Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development at (202) 708-3291. (This is not a toll-free number.) For general information concerning the Section 8 component of the Elderly Independence demonstration, contact Gerald J. Benoit, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development at (202) 708-0477. (This is not a toll-free number.) Hearing-impaired individuals may reach either Mr. Nachison or Mr. Benoit by calling the TDD number of the Federal Information Relay Service, 1-800-877-TDDY, and requesting a transfer to either of them.

**SUPPLEMENTARY INFORMATION:  
Paperwork Burden**

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. When these requirements have been approved, a notice will be published to that effect in the *Federal Register*. Until that time, no person may be subjected to a penalty for failure to comply with the information collection requirements.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, will be accepted for 30 days. They should be sent to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530. The public reporting burden for the collection of information requirements contained in this Notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed to both apply for the grants and report to HUD on a regular basis (if funded), and for completing and reviewing the collection of information. Information on the estimated reporting burden is provided in this document under the heading "Other Matters."

**Background**

Section 803 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990) (the Act) creates HOPE for Elderly Independence, a five-year demonstration program, the purpose of which is to test the effectiveness of combining rental certificates and rental vouchers with supportive services for frail elderly persons living in the community who are eligible for Section 8 assistance, but who are not currently receiving any form of housing assistance. HUD recognizes that the Act allows the Elderly Independence demonstration to include assistance for frail elderly persons already receiving rental subsidies, but has determined that, in order to achieve the purposes of this demonstration, frail elderly persons currently receiving housing assistance will not be eligible.

HUD is authorized to enter into contracts with eligible public housing agencies (PHAs) to provide tenant-based rental vouchers and rental

certificates to frail elderly individuals living in the community who are eligible for such rental assistance. During the five-year period, housing assistance must be combined with the supportive services that a frail elderly person needs to remain in an independent community setting. Up to 40 percent of the cost of the supportive services will be provided by HUD grants.

The Elderly Independence demonstration under this Notice provides assistance for frail elderly persons who have incomes of 50 percent or less of the median income for that area. At the time they are offered assistance, such persons will live in an unsubsidized dwelling unit, which may or may not already meet housing quality standards. They will usually live alone and have a minimal informal support network (e.g., no family or close friends within a one-half hour's drive). For the purposes of the Elderly Independence demonstration, there is both a test for income eligibility under Section 8 and a test for deficiencies in at least three Activities of Daily Living. During the five-year term of this demonstration, HUD will examine whether providing combined housing assistance and supportive services to frail elderly persons is effective in enabling these individuals to remain living independently, thus avoiding premature or unnecessary institutionalization.

#### Summary of Program Features

Under the Elderly Independence demonstration, HUD will provide five-year supportive services grants and rental certificate or rental voucher housing assistance to selected PHAs. Funds for tenant-based Section 8 housing assistance will be obligated by the Annual Contributions Contract (ACC) with the PHA. Funds for the supportive services grants will be obligated by the supportive services grant instrument. Each of these instruments will be executed separately.

Selection of PHAs to participate in the Elderly Independence demonstration will be by nationwide competition under selection criteria described in these guidelines and a Notice of Funding Availability (NOFA) to be published when funds for this program are made available.

It is HUD's intention to demonstrate in this program a new model of providing housing assistance and supportive services to frail elderly individuals. It is an approach which HUD expects will work—and, through a carefully executed and successful demonstration—will grow into a major approach for providing housing assistance and supportive services for

frail elderly persons. HUD expects to show that effectively targeted and tailored supportive services, coupled with tenant-based housing assistance to those who are frail, can serve a maximum number of frail elderly with the limited resources available, and prevent the premature or unnecessary institutionalization of these persons. Thus, it is expected that cost efficiency resulting from the ability of the PHA to craft a flexible program, limited to the supportive services needed by each program participant, will result in the maximum number of frail elderly persons satisfactorily served with both housing assistance and supportive services. It also will result in cost savings compared to institutional forms of care. Therefore, HUD expects to fund the best possible proposals with innovative and cost efficient ideas.

Supportive services shall be combined with rental housing assistance provided under the Elderly Independence demonstration. The program participant shall be provided with supportive services which are needed by the program participant to remain in an independent community setting, and avoid unnecessary or premature institutionalization. HUD will provide funds to cover housing assistance and up to 40 percent of the cost of necessary supportive services for a five-year demonstration period. PHAs must match the HUD supportive services funds with at least 50 percent of the total cost of the supportive services estimated to be necessary by the PHA and approved by HUD. Program participants must pay 10 percent of the total cost of the supportive services, up to a maximum of 20 percent of adjusted gross income (the income used to determine family share of rent under the rental certificate and rental voucher regulations). A PHA may waive the fee for a program participant who does not have any adjusted gross income. In cases where program participants are not required to pay the full 10 percent of the supportive services costs in fees, the PHA and HUD will share any shortfall on a 50/50 percent basis.

The PHA will develop a supportive services plan and a case management and assessment plan as part of the application, in consultation with the Area Agency on Aging (which will provide in the application a letter to HUD describing its involvement with the proposed project). The supportive services include those supportive services which address the special needs of frail elderly individuals and have been approved by the Secretary. It is HUD's intention that the supportive services program shall provide the

minimal level of supportive services necessary for a program participant to retain independence. It also is HUD's intention that the case management/assessment system shall be designed to enhance the ability of the program participant to be involved in the decisions determining necessary supportive services. This involvement will facilitate the most effective tailoring of supportive services to the individual program participant and thus foster the program participant's continued independence, to the extent possible, and avoid dependency.

A frail elderly person who is found to be deficient in at least three Activities of Daily Living, as defined in these guidelines, will be offered a tenant-based rental voucher/rental certificate linked to the appropriate supportive services.

Section 803(e)(3) of the Act provides that no more than 10 percent of either the funds available for housing assistance or the funds available for supportive services be used for a demonstration project for any one PHA.

PHAs must provide supportive services to program participants for the full term of the supportive services grant, except that the supportive services will be discontinued in cases where the program participant ceases to participate in the Elderly Independence demonstration. In cases where a program participant no longer needs supportive services or chooses to no longer participate in the Elderly Independence demonstration, the rental certificates/rental vouchers will not be affected. PHAs must continue the section 8 assistance to the participants at the end of the 5-year demonstration, and also must provide a plan for continuing the supportive services for program participants at the end of the 5-year demonstration period.

A PHA may use in any one year up to 20 percent of the supportive services funds. However, if a PHA does not use 20 percent in any year, excess from that year's allocation is available for use in future years. This should allow sufficient flexibility for tailoring the program to a changing array of housing and services needs for individuals over time.

Under the demonstration, assistance will be provided for frail elderly individuals on the PHA's section 8 waiting list or, if an insufficient number of individuals are on the waiting list, through an outreach effort in the community, in accordance with section 8 regulations. Elderly persons must apply to the PHA for certificate or voucher assistance through the normal

application process. If eligible for a rental voucher/rental certificate, the elderly individual then must be assessed for degree of frailty by a Professional Assessment Committee, or by a local agency which provides such services for the community. This assessment will determine the individual's eligibility for participation in the Elderly Independence demonstration. An elderly individual who is determined not deficient in at least three Activities of Daily Living, and, therefore, ineligible for the Elderly Independence demonstration, shall not lose his or her place on the waiting list for a regular rental voucher or rental certificate.

In order that supportive services can be delivered in an efficient and cost effective manner, the PHA may define a geographic area in which a program participant must live that is smaller than the total geographic area covered by the PHA. Program participants may live in a variety of dwelling units, but these dwelling units must meet the section 8 Housing Quality Standards and other rental voucher/rental certificate program requirements. A program participant may remain in his or her current dwelling unit if the unit is in the geographic area defined by the PHA (if any) and meets all the requirements of the rental certificate/rental voucher program.

#### Other Matters

These guidelines do not constitute a major rule as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3)

have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that the guidelines would not have a significant economic impact on a substantial number of small entities. These guidelines would govern the procedures under which HUD would make housing assistance available to applicants under a program designed to house and provide supportive services to frail elderly persons.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410. HUD has determined that an environmental assessment under the National Environmental Policy Act of 1969 of applications under this demonstration is not required because the Section 8 assistance is categorically excluded from environmental assessment, and the supportive services will involve little or no physical change. HUD intends to categorically exclude applications from environmental assessment by issuing a final rule amending 24 CFR part 50 at the time the Notice of Fund Availability for the demonstration is issued. HUD is in the process of consulting with the Council on Environmental Quality

(CEQ) on this matter, in accordance with CEQ regulations that require such consultation when an agency issues or revises its environmental regulations.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The Elderly Independence demonstration can be expected to provide additional decent and sanitary housing for frail elderly individuals. Further, the supportive services provided by this program are expected to prevent or postpone unnecessary or premature institutionalization and thus reduce unnecessary stress and financial burden on participant's families. Since the impact on the family is considered beneficial, no further review is necessary.

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in these guidelines do not have Federalism implications, and, thus, are not subject to review under the order. These guidelines are limited to providing the procedures under which HUD would make rental assistance available to applicants under a program designed to provide housing assistance and supportive services to frail elderly individuals.

#### Public Reporting Burden

The information collection requirements contained in these guidelines have been submitted to the Office of Management and Budget under the paperwork reduction Act of 1980 (44 U.S.C. 3501-3502). The Department has determined that the following provisions contain information collection requirements.

TABULATION OF REPORTING BURDEN

| Info. collected                       | No. of respondents | Responses/ respondent | Total ann. responses | Hours/ response | Total hours |
|---------------------------------------|--------------------|-----------------------|----------------------|-----------------|-------------|
| Initial application.....              | 100                | 1                     | 100                  | 14              | 1400        |
| Budget formats.....                   | 25                 | 1                     | 25                   | 3               | 75          |
| Quarterly rpts.....                   | 25                 | 3                     | 75                   | 1.5             | 112.5       |
| Annual rpts.....                      | 25                 | 1                     | 25                   | 3               | 75          |
| Application to elderly ind. prog..... | 1500               | 1                     | 1500                 | 4               | 6000        |
| Total annual burden.....              |                    |                       |                      |                 | 7662.5      |

Accordingly, the Department adopts the following guidelines as the HOPE for Elderly Independence Program Guidelines

#### HOPE for Elderly Independence Program Guidelines

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## I. Introduction

### A. Purpose and Scope

These guidelines implement HOPE for Elderly Independence, a five-year demonstration program authorized by Section 803 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, enacted November 28, 1990). The purpose of the Elderly Independence demonstration is to test the effectiveness of a program that combines tenant-based rental certificates and rental vouchers with supportive services for frail elderly individuals who are not currently participating under any Federal, State or local housing program. Housing assistance and supportive services funding will be provided subject to the availability of appropriations.

### B. Summary

The key elements of the Elderly Independence demonstration are as follows:

1. *Housing Assistance.* HUD will provide 5-year funding for rental certificates/rental vouchers to selected

PHAs. Program participants may receive tenant-based rental subsidies in accordance with the requirements for these programs.

If interested in applying for the demonstration, a PHA may apply for not more than 10 percent of the rental certificates/rental vouchers provided for this demonstration. This will be combined with an application for supportive services funds under the Elderly Independence demonstration.

2. *Supportive Services.* HUD will provide supportive services grants to selected PHAs which will provide, or see to the provision of, appropriate supportive services for frail elderly individuals living in the community. The supportive services grant is to be used for the period commencing on the date of enactment of the Act and ending on the last day in the fifth year of the demonstration period. These supportive services funds are provided to the PHA together with funding for the rental certificate or rental voucher assistance. The supportive services to be provided are those minimally necessary to insure that program participants retain their independence and avoid unnecessary or premature institutionalization. Supportive services funds requested in any one application shall not be for more than 10 percent of the funds available.

3. *Matching Funds.* Fifty percent of the cost of the supportive services that are needed for program participants must be paid for from sources other than the supportive services grant. The PHA must ensure such funding. This portion of costs must be provided by either the PHA directly or by other sources. The PHA and third party providers must provide firm certification with committed dollar amounts for the first year of the demonstration period, and will be required to do so annually thereafter, as part of the annual program/budget review.

4. *Participant Fees.* The PHA must assure that each program participant will pay at least 10 percent of the cost of the services received, up to a limit of 20 percent of adjusted gross income. This requirement may be waived by the PHA in cases where that individual does not have any adjusted gross income (income used to determine family share of rent under the rental certificate and rental voucher regulations). In cases where program participants are not required to pay a full 10 percent of the supportive serviced costs, 50% of the shortfall will be paid for from the supportive services grant funds. The balance will be paid for by the PHA from other sources.

5. *Professional Assessment Committee.* The PHA may establish a

voluntary Professional Assessment Committee (PCA). The PAC must be composed of at least one qualified medical professional and two others professionally competent to assess functional dependence in the elderly. The PHA may opt, alternatively, to develop a formal relationship with a local agency, e.g., a County Health Department Geriatric Assessment Service, to perform assessments of elderly individuals for eligibility for this program, and assessments of the services needed by each individual to remain independent. The PAC or other entity performing this function must work with the Service Coordinator and the program participant to assure that:

a. The services are effectively tailored to that individual and provide the minimum supportive services needed for that frail elderly individual to remain independent; and

b. The program participant is involved in the decision process in a manner that promotes his or her independence, rather than dependence.

Each program participant must be income eligible for the Section 8 program, at least 62 years of age and deficient in at least three Activities of Daily Living.

### C. Applicability of Other Program Requirements

All Section 8 Rental Voucher and Rental Certificate program regulations and requirements are applicable to the Elderly Independence demonstration. Pursuant to section 803(b) of the Act, the PHA may restrict availability of participation in the demonstration program to a geographic area, where necessary to assure that the provision of supportive services is feasible. Where the PHA elects to designate a geographic area for this purpose during the demonstration period, the individual may only receive rental certificate or rental voucher assistance for rental of a dwelling unit in the designated geographic area. In such a case, the individual may not rent a dwelling unit anywhere else in the PHA's jurisdiction. In addition, the rental certificate or rental voucher does not have portability rights pursuant to Section 145 of the Housing and Community Development Act of 1987 (Pub. L. 100-242).

## II. Definitions

For the purposes of this program:  
*Act* means Section 803 of the Cranston-Gonzalez National Affordable Housing Act.

*Activities of Daily Living (ADL)* as defined by the Secretary means eating, dressing, bathing, grooming and

household management activities as further described below:

- Eating: May need assistance with cooking, preparing or serving food, but *must* be able to feed self;
- Bathing: May need assistance in getting in and out of the shower or tub, but *must* be able to wash self;
- Grooming: May need assistance in washing hair, but *must* be able to take care of personal appearance;
- Dressing: *Must be able* to dress self, but may need occasional assistance;
- Home Management Activities: May need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but *must* be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

*Applicant* means a Public Housing Agency (PHA), including Indian Housing Authorities, applying for Section 8 funding and a supportive services grant under the Elderly Independence demonstration.

*Area Agency on Aging* means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965, as amended (45 CFR chapter 13).

*Assistant Secretary* means the Assistant Secretary for Housing-Federal Housing Commissioner.

*Case Management* means implementing the processes of: establishing linkages with appropriate agencies and service providers in the general community in order to properly tailor the needed services to the program participant; linking program participants to providers of services that the participant needs; developing and monitoring of case plans in coordination with a formal assessment of services needed; and educating participants on issues including, but not limited to supportive service availability, application procedures and client rights.

*Demonstration Period* means the five-year period beginning on the date of enactment of the Act and ending upon the expiration of the five year period beginning on the date of enactment of the Act.

*The Elderly Independence demonstration* means the HOPE for Elderly Independence Demonstration Program authorized by section 803 of the Act.

*Fair Market Rent (FMR)* means the rent, including utilities (except telephone), ranges and refrigerators and all maintenance, management and other services, which would be required to be paid, in order to obtain privately owned,

existing, decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. Separate FMRs are published annually by HUD for dwelling units of varying sizes (number of bedrooms) in the Federal Register in accordance with 24 CFR 888.

*Frail Elderly Person/Individual* means an elderly person deficient in at least three ADLs and income eligible for the Elderly Independence demonstration.

*Geographic Area* means that portion of the PHA's jurisdiction to which the Elderly Independence demonstration has been restricted to ensure an efficient and effective supportive service delivery system.

*Grants Officer* refers to the individual delegated the authority by HUD to execute and administer the supportive services grant instrument on behalf of HUD. Only the grants officer may authorize deviations by the PHA from the terms and conditions of the supportive services grant, including deviations from program requirements.

*HUD* means the Department of Housing and Urban Development. "Program Participant" means a frail elderly person who has been admitted to the Elderly Independence demonstration.

*Professional Assessment Committee (PAC)* means a group of at least three persons appointed by the PHA which shall include at least one qualified medical professional and others professionally competent to appraise the functional abilities of frail elderly persons with respect to the performance of normal daily living activities.

*Public Housing Agency (PHA)* means the entity defined in Section 3(b)(6) of the United States Housing Act of 1937 (the 1937 Act), including Indian Housing Authorities as defined in Section 3(b)(11) of such Act.

*Rental Certificates* means a certificate issued by the PHA declaring a family to be eligible for participation in the Section 8 tenant-based Rental Certificate Program under 24 CFR part 882 and stating the terms and conditions for such family's participation. For the purposes of this program, rental certificates are only available to frail elderly persons. Units developed pursuant to 24 CFR 882, subpart G (Project-based Certificate Assistance), are not eligible.

*Rental Voucher* means a document issued by a PHA declaring a family to be eligible for participation under the Section 8 Rental Voucher Program and stating the terms and conditions for the family's participation under the Rental Voucher Program under part 887. For the purposes of this demonstration, rental

vouchers are only available to frail elderly persons.

*Secretary* means the Secretary of the Department of Housing and Urban Development.

*Service Coordinator* means a social services staff person who is hired by the PHA or management company, or another third party contractor such as a local case management agency. The Service Coordinator is responsible for assuring through case management that program participants are linked to the supportive services they need to continue independent living.

*Supportive Services* means assistance which the Secretary determines addresses the special needs of frail elderly persons and may be provided directly by the PHA or through a third party provider with the assistance of the Service Coordinator. Such services include case management, personal care and grooming, transportation, meals, housekeeping, laundry, counseling, non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with State law, and other requested supportive services essential for achieving and maintaining independent living, if approved by HUD.

*Service Provider* means a person or organization licensed or otherwise approved in writing by a State or local agency (e.g., Department of Health, Department of Human Services or Welfare) to provide supportive services. Such person or organization may provide the service on either a for-profit or not-for-profit basis.

*State Agency on Aging* means the single agency designated by the governor to administer the program designated under Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

### III. Program Participant Eligibility, Selection, Termination

#### A. Program Participant Selection

Rental housing certificates and rental housing vouchers will be made available to PHAs for the Elderly Independence demonstration in Fiscal Year 1991 and again in Fiscal Year 1992. Eligibility is limited to frail elderly applicants who are 62 years old; qualify as a very low income family (whose income generally does not exceed 50 percent of the median income for the area); and are not receiving any form of Federal, State or local housing assistance at the time of expressing an interest to the PHA in participating in the Elderly Independence demonstration. The PHA must establish a program participant selection preference for frail elderly

individuals on the PHA's Section 8 waiting list. If there are not a sufficient number of eligible and potentially frail elderly individuals on the PHA's waiting list who qualify for selection for the demonstration, the PHA must advertise for frail elderly applicants to be added to the waiting list. If the PHA waiting list is closed, the PHA may open its list solely to frail elderly applicants for rental vouchers or certificates provided to the PHA for use in the Elderly Independence demonstration, and may also limit the number of applications accepted.

#### *B. Short-term Institutionalization*

If a program participant temporarily is unable to reside in a dwelling unit leased with rental certificate or voucher assistance under the Elderly Independence demonstration, due to severe illness or accident requiring short-term institutionalization, the PHA and the PAC, in consultation with the program participant and family, and involved doctors, shall determine whether there is a reasonable expectation that the individual will be able to return home to live in the dwelling unit. If not, the PHA may terminate the individual's eligibility for the supportive services under the Elderly Independence demonstration (see section VI.B.3.b. of these guidelines). The PHA must adopt a policy for termination and informal hearing procedures.

#### *C. Termination of Assistance for Supportive Services*

Termination of rental assistance shall be in accordance with 24 CFR 882.210 for the rental certificate program or 24 CFR 887.403 for the rental voucher program, as appropriate. If rental assistance is terminated in accordance with Section 8 requirements, the HUD-funded portion of the supportive services component also is terminated. Supportive services shall be terminated if the participant:

1. Gains physical and mental health, and is able to function without supportive services, even if only for a short time (in which case readmission to the supportive services component—based upon reassessment to determine degree of frailty—is acceptable).
2. Requires a higher level of care than that which can be provided under the Elderly Independence demonstration; or,
3. Refuses to pay rent and/or services fees.

The program participant shall be provided an informal hearing in accordance with the procedures in 24 CFR 882.216(b) under the rental certificate program and 24 CFR

887.405(b) for the rental voucher program.

#### *D. Interim Use of Section 8 Assistance*

Section 8 rental certificates and rental vouchers provided for the Elderly Independence demonstration program may be used for families on the PHA's Section 8 waiting list if the PHA determines that it will have an adequate number of rental vouchers or rental certificates available when needed in connection with the Elderly Independence demonstration. The PHA must develop a written plan to assure this availability prior to the interim use of the Section 8 Assistance.

#### *E. Participatory Agreement*

Each program participant must sign a participatory agreement regarding utilization of supportive services and payment of supportive service fees. The agreement must be renegotiated by the PHA at the time of annual rent recertification.

#### **IV. Housing Search and Neighborhood Restrictions**

The PHA must amend, if appropriate, its Equal Opportunity Housing Plan and Administrative Plan to address special assistance for program participants to locate suitable housing. Any costs associated with either the "search and locate" process or the physical move itself may not be paid with supportive services funds under the Elderly Independence demonstration.

A PHA may, at its option, define a geographic area within the jurisdiction that it serves in which potential program participants must live. The PHA must consider at least: The limits (if any) of the service area of the service providers which it proposes to utilize, including provision of supportive services by the PHA, and cost efficiency and effectiveness of such service delivery. A clear justification must be provided in the application for any geographic area proposed (other than the jurisdiction that the PHA normally serves), including maps with any relevant boundaries, and must provide a description of the nature and cost of the housing.

#### **V. Supportive Services**

PHAs must develop a plan to provide or secure supportive services appropriate to the needs of program participants. This plan should be developed in consultation with the Area Agency on Aging. Supportive services shall be coupled with 100 percent of the allocated rental certificates/rental vouchers.

The supportive services or funding thereof may be provided by State, local,

public or private providers. PHAs may provide the services directly or subcontract with service providers in the community. The ability of HUD to provide funds to cover 40 percent of the cost of the supportive services is a key element enabling a Service Coordinator to put together an effective program of minimal supportive services tailored to the needs of each program participant, rather than completely depending only on the array of services potentially available through other sources.

The PHA must certify that the supportive services (see section XV of these guidelines) will be available for the 5-year Elderly Independence demonstration. The supportive services grant is for that period commencing on the date of the enactment of the Act and ending on the last day in the fifth year of the demonstration period. Also, the PHA and third party providers must provide firm certification with committed dollar amounts for the first year of the demonstration period, and will be required to do so annually thereafter, as part of the annual program/budget review. Finally, each PHA must provide a services plan estimating the type and nature of the services to be provided, and the estimated cost for each unit of service.

The Elderly Independence demonstration may fund only the minimum amount of supportive services needed by a program participant to remain independent and avoid unnecessary institutionalization. Program participants may buy additional services from the PHA at the cost to the PHA, if they wish, provided that the additional services do not put an undue burden on the management of that PHA's program.

The PHA also must obtain a letter from the Area Agency on Aging certifying to HUD that the costs of the supportive services proposed are reasonable and that they are consistent with the cost of other supportive service programs in that jurisdiction. This letter will be required with the application and during the annual program/budget review. The Area Agency also must detail the degree to which it is involved with the planning and proposed operations of Elderly Independence.

While HUD recognizes that the duration, types and intensity of services provided to program participants may change over time, each PHA must estimate the total value of services to be provided over the five-year life of the demonstration period in its application. The PHA shall provide a plan in the application for the continuation of the supportive services to program

participants who will need them after the end of the demonstration period.

#### VI. Assessment/Case Management Process

The assessment and case management process is the critical element in devising a successful program. There are two factors which HUD is especially interested in seeing expressed through the proposals. The first is the degree to which the case manager (Service Coordinator) is able to build relationships with agencies in the community to secure ongoing provision of supportive services and other necessary items for the program. The second is the degree to which the Service Coordinator can assist program participants to make their own choices, based upon needs and wants identified by the PAC assessment plus other supportive services the frail elderly individual may wish to purchase. The objective is for the Elderly Independence demonstration to provide only those services necessary for frail elderly persons to maintain independence and to avoid a situation in which supportive services prescribed by the PAC create dependence.

The PHA must define the case management and assessment processes. In cases where a community agency is charged with the responsibility for the role of the PAC (see section VI.B of these guidelines), it may not also simultaneously provide services to the program participants. The PHA must explain how the case management and assessment processes link program participants to housing and service providers, utilizing the following elements:

##### A. Service Coordinators

A full-time Service Coordinator should be able to serve about 50-70 frail elderly individuals. (The PHA may hire a Coordinator for less than full-time.) The Service Coordinator may be hired directly by the PHA or contracted through a case management agency on a fee-for-service basis. If the Service Coordinator is a contracted-out function, the Service Coordinator may not work for a service provider agency which intends to simultaneously provide services to the PHA for the Elderly Independence demonstration.

For PHAs proposing to contract out to a third-party agency for a Service Coordinator, a copy of the contract must be included with the application, and the contract must include provisions containing, at a minimum: beginning and end dates of the contract; number and responsibilities of staff hired; rates of pay/costs of services to be provided;

location of office(s) and an agreement to provide HUD access to the files; other documentation pertinent to the Elderly Independence demonstration; and other items necessary to conform to 24 CFR 85.36(i). Any contracts awarded under this subsection must conform to the policies and procedures stated at 24 CFR 85.36.

1. *Qualifications:* A Service Coordinator's work and educational experiences should meet the following minimum guidelines:

- a. A Bachelor of Social Work or degree in a related field such as gerontology, psychology or counseling. A PHA may propose justification for hiring a person without a degree.
- b. 2-3 years of experience in social services delivery with senior citizens or demonstrated working knowledge of supportive services and other resources for senior citizens in the jurisdiction where the demonstration is located.
- c. Ability to advocate, problem-solve and provide results for the elderly served.
- d. Demonstrated writing and organizational skills.

2. *Functions of the Service Coordinator:* a. Provides general case management and referral services to all applicants for the Elderly Independence demonstration. This involves intake screening upon referral of those income eligible frail elderly individuals from the PHA, and preliminary assessment of frailty, using a commonly accepted assessment tool. The Service Coordinator then will refer to the PAC those individuals who appear eligible for the Elderly Independence demonstration.

b. Establishes linkages and professional relationships with all agencies and service providers in the community; develops a directory of providers for use by demonstration program staff and program participants.

c. Completes for the PAC all paperwork necessary for the assessment, referral, case monitoring and reassessment processes; implements the case plan developed by the PAC and agreed to by the program participant. Maintains necessary case files on each program participant, containing such information and kept in such form that HUD shall require. Provides the files to PAC members upon request, in connection with PAC duties.

d. Refers program participants to service providers in the community, or those of the PHA.

e. Monitors the ongoing provision of services from community agencies and keeps the PAC and the agency providing the supportive service informed of the progress of the individual. If needed, the

Service Coordinator may request reassessment of the individual by the PAC at intervals less than that stipulated in PAC operating procedures.

f. Educates program participants on such issues as application procedures, service availability, client rights.

g. Establishes volunteer support programs with service organizations in the community.

h. Assists the program participant build informal support networks with neighbors, friends and family.

i. Educates other PHA management staff on issues related to "aging-in-place" and services coordination, to help them to work with and assist other persons receiving housing assistance through the PHA.

3. *Assessment and Development of Case Plan.* Each frail elderly individual tentatively selected by the PHA must be assessed for degree of functional dependence before being accepted into the Elderly Independence demonstration. The assessment may be performed by a voluntary PAC, which handles the entrance into and the transition out of the Elderly Independence demonstration; development of case plans for that person; and regular reassessment of the individuals in the program. PAC members (except the Service Coordinator) may not be paid with Elderly Independence demonstration funds, but if the duties and responsibilities of the PAC are provided by a community agency, the agency's costs may be counted as matching funds. The PAC, upon completion of the assessment, must make a recommendation to the Service Coordinator for acceptance into (or denial of acceptance into) the Elderly Independence demonstration. In the case of an acceptance, the PAC must provide a case plan. Once an individual is accepted into the Elderly Independence demonstration, it is the responsibility of the Service Coordinator to take the case plan tailored to the needs of that individual and work with community agencies (or the PHA, if it is the service provider) to ensure that the services are provided on a regular, ongoing, and satisfactory basis.

Prior to actual acceptance into the Elderly Independence demonstration, the potential program participant must work with the PAC and the Service Coordinator in finalizing the supportive services plan. In finalizing this plan, the PAC must take into consideration the frail elderly individual's needs and wants and provide the minimum supportive services necessary to maintain independence—and not create

dependence. Thus, the PAC, in situations where a frail elderly individual refuses to accept a supportive service recommended for maintaining independence, must determine whether that person may maintain independence without such supportive service and, therefore, still be able to participate in the Elderly Independence demonstration. Conversely, a program participant may request and pay for supportive services above and beyond those necessary for maintaining independence at the participant's expense, provided that this does not put an undue burden on the management of that PHA's program. The PHA will provide these services at the cost that it pays for them.

#### B. Professional Assessment Committee

Each PAC shall be composed of from three-to-seven members appointed by the PHA, at least one of which is a qualified medical professional, e.g., a physician or registered nurse. The Service Coordinator must be on the PAC. Other members must also be professionally qualified to appraise the functional abilities of frail elderly individuals in relation to the performance of the normal activities of daily living. The PHA (e.g., the Service Coordinator) may refer to the PAC those elderly applicants, in accordance with the PHA's approved tenant selection process, who are interested in applying for the Elderly Independence demonstration and have been screened for degree of frailty.

The PAC (or a community agency with which the PHA has a written agreement to do assessments and which provides such services for low income elderly in the general community) will assess the degree of frailty of elderly persons applying for the Elderly Independence demonstration, referred by the PHA. PHAs may develop an agreement with community agencies to do such assessments as an alternative to doing its own screening for frailty and setting up its own PAC. Such an agreement would include a letter of understanding between the PHA and the assessment center stating the roles, responsibilities and relationship of each to each other. It also must be signed by the executive officer(s) of both organizations. This letter must be included in the PHA's application to HUD. Such local agencies may include, but are not limited to: Geriatric Assessment Centers, Public Health and Veterans Administration facilities, County Health Departments, or similar private agencies.

Any elderly individual selected to participate in the Elderly Independence

demonstration must be determined by the PAC (or the community agency serving as the PAC for the PHA) to be deficient in at least three ADLs as provided in paragraph B.2.b. of this section VI.

A PAC must establish operating procedures and establish case files for each frail elderly individual. The PAC must operate according to the following guidelines:

1. *General Operating Procedures.* a. Recommend to the Service Coordinator eligibility for entrance to, or transition out of the Elderly Independence demonstration.

b. Authorize or perform a medical evaluation, if necessary. This evaluation may be performed by a PAC medical professional, or the applicant to Elderly Independence may be referred to another agency in the community that will perform the evaluation without charge.

c. Recommend, and update as necessary, a supportive services plan for each frail elderly individual.

d. Be furnished with and retain information in files concerning program participants. The files should contain such information and be maintained in such form that HUD shall require.

e. Present written evaluations to the PHA.

f. Allow for program participants to appeal decisions related to entrance to, degree of participation needed, and transition out of the Elderly Independence demonstration.

2. *Specific Operating Procedures.* a. Perform a formal assessment of each potential program participant's deficiencies in performing the ADLs. This assessment shall be based upon the screening done by the Service Coordinator, and shall include a review of the adequacy of the informal support network (i.e., family and friends available to the potential participant to assist in meeting the ADL needs of that individual).

b. Clarify that the program participant needs assistance in at least three ADLs. The minimum requirements of ADL include:

(1) Eating: May need assistance with cooking, preparing or serving food, but must be able to feed self;

(2) Bathing: May need assistance in getting in and out of shower or tub, but must be able to wash self;

(3) Grooming: May need assistance in washing hair, but must be able to take care of personal appearance;

(4) Dressing: must be able to dress self, but may need occasional assistance;

(5) Home Management Activities: May need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

c. Perform a regular reassessment and updating of the supportive services plan of all participants.

d. Replace any members of the PAC within 30 days after such member resigns. A PAC should not do formal assessments if its membership drops below three, or if the qualified medical professional leaves the PAC and has yet to be replaced by the PHA.

e. Notify the PHA and program participants of any proposed modifications to PAC procedures and provide these parties with a process and reasonable time period on which to review and comment, prior to adoption.

f. Provide assurance of nondiscrimination in selection of Elderly Independence participants, with respect to race, religion, color, sex, national origin or type of handicap.

g. Provide complete confidentiality of information related to any individual examined, in accordance with the Privacy Act of 1974.

Procedures should ensure that any frail elderly person (and program participant upon reassessment) has the option of refusing offered services and requesting other supportive services as part of the case planning process. In the case of refusal of services, the PAC must determine the person's continued ability to live independently without the recommended service, with this determination being a consideration for the individual's entering into/remaining in the Elderly Independence demonstration.

In situations where an individual requests additional service(s), not initially recommended by the PAC, the PAC must make a determination of whether this request is legitimately a needs-based service which can be covered under the Elderly Independence demonstration subsidy.

3. *Eligibility/Admissions/Transition out Procedures.* a. Eligibility/admissions.

Before selecting frail elderly participants, each selected PHA (with PAC assistance) shall develop a supportive services application form for frail elderly individuals to use in applying for supportive services under the Elderly Independence demonstration. The information in the individual's supportive services

application is crucial to the PAC's determination of the need for further physical and/or psychological evaluation of any individual who wishes to receive the supportive services offered. The application should include: any intake form, the ADL assessment, and any appropriate comments from both the applicant's physician and the Service Coordinator.

**b. Transition out of Elderly Independence.**

The PHA/PAC must develop procedures for providing for an individual's transition out of the Elderly Independence demonstration to another setting.

Such a transition is based upon the degree of supportive services needed by that individual to continue to live independently. A program participant can be transitioned out of the Elderly Independence demonstration under the circumstances described below. If that program participant is transitioned out of the program, but wishes to retain the section 8 assistance, he or she may do so, so long as he or she remains income eligible and continues to pay rent.

(1) Gains physical and mental health and is able to function without supportive services, even if only for a short time (in which case readmission to the supportive services component—based upon reassessment to determine degree of frailty—is acceptable).

(2) Requires a higher level of care than that which can be provided under the Elderly Independence demonstration; or,

(3) Refuses to pay rent and/or services fees.

A program participant leaving the demonstration may retain his or her rental certificate/rental voucher consistent with regulations of either the rental certificate or rental voucher programs.

**VII. Community Involvement**

The PHA must involve the appropriate Area Agency on Aging (or State Agency on Aging if such state is not subdivided into Area Agencies) in the development of the supportive service program which includes: The assessment process for determining participation in the Elderly Independence demonstration; review of the application prior to its submission to HUD; and review of ongoing operations.

HUD encourages each PHA to also propose formation of an advisory committee involving the Area Agency on Aging and other outside agencies, including service providers. An advisory committee can be instrumental in insuring that ongoing operations lead to the most effective and efficient delivery of supportive services to the program participants. If an advisory committee is

established, HUD recommends that it contain at least 5 members, including one from the Area Agency on Aging, and that all members have familiarity with the aging process, "aging-in-place" and the needs of frail elderly. If the PHA proposes to form such an advisory committee, the committee's roles and functions must be fully described in the application.

**VIII. Matching Funds**

The PHA, directly or through third-parties, must provide 50 percent of the cost of the supportive services necessary for program participants. If a program participant pays less than 10 percent of the supportive services costs, the PHA must provide 50 percent of the program participant's share that the participant is not required to pay. All sources of matching funds must be directly related to the types of supportive services prescribed by the PAC. In determining potential sources of matching funds for the necessary supportive services, the PHA may include:

1. Cash (which may include funds from Federal, State and local governments, third party contributions, available payments authorized under Medicaid for specific individuals in Elderly Independence, grants or subgrants of funds originating from an Area Agency on Aging under the Older Americans Act and funds from local governments originating from either Community Development Block Grants or Community Services Block Grants). Funds from this supportive services program may not be used for match;

2. The dollar value of other agency or third party-provided direct services or staff who will work or provide services to program participants; these services must be justified in the application to assure that they are the services necessary to keep the program participants independent.

3. The dollar value of in-kind items (these are limited to 10 percent of the 50 percent matching amount), such as the current market value of donated furniture, material, supplies, equipment and food used in direct provision of services. The applicant must provide an explanation for the estimated donated value of any item listed and an explanation of why they are necessary to keep the program participants independent.

4. The value of volunteers to the program at a rate of \$5.00 an hour. The value of PAC volunteer time CANNOT be counted for any time period estimate related to initial assessment of individuals before they are accepted

into the Elderly Independence demonstration.

The PHA shall submit with its application a letter from each third party service provider (or supplier of donated services and/or equipment/supplies) documenting the firm availability of that source of matching funds and specifying discrete amounts and/or numbers of supportive service units and value to be provided during the year, if considered necessary by the PAC or other entity performing the assessment of the frail elderly individual participants' needs. PHAs also shall supply such documentation with each annual budget review in such form as specified by HUD and explain how many mismatches between the services committed and those needed by the participants have been corrected.

HUD will review the infusion of matching funds annually, as part of the program/budget review. If there are insufficient matching funds available to meet HUD requirements at any point after grant start-up, or at any time during the term of the demonstration (that is, match from sources other than program participant fees (see section IX of these guidelines) drops below 50 percent of total supportive services cost), HUD may decrease its share of supportive services funds accordingly. This adjustment will be done in the year subsequent to the year of the shortfall, so that the required ratio of HUD to non-HUD funds is maintained. Such determination may be reconsidered by HUD at such time that the PHA provides sufficient matching funds to eliminate any shortfall.

**IX. Program Participant Fees**

Each program participant must pay a fee of 10 percent of the cost of the services, up to a maximum of 20 percent of adjusted gross income as defined in 24 CFR parts 813 or 887. In cases where a frail elderly individual does not have any adjusted gross income, the fee requirement may be waived by the PHA. The PHA is required to establish the supportive services fee amount at the time of the frail elderly individual's acceptance into the Elderly Independence demonstration, and to revise it, as appropriate, at each subsequent Section 8 recertification.

In cases where supportive service fees are set at less than 10 percent of adjusted gross income, the resulting difference shall be shared by the PHA and HUD on a 50-50 basis. Each PHA must certify that in the event there is such a shortfall it must (with its service providers) agree to provide an equal share of that shortfall, up to 50 percent.

#### X. Maintenance of Existing Supportive Services

In the application, the PHAs and supportive service providers must certify that they will maintain those existing supportive services the frail elderly person is already receiving and which the PAC says are needed to maintain independence. These services will be maintained for the time that individual remains in the Elderly Independence demonstration, unless the PAC or other entity performing the assessment determined that they are no longer needed. They do not qualify as matching funds. This certification must be provided annually, subsequent to the execution of the supportive services grant instrument, as part of the annual program and budget review, for any program participant who was receiving eligible supportive services at the time of the frail elderly person's application to the PHA to enter the Elderly Independence demonstration.

#### XI. Other Program Components

##### A. Reserve Fund

No more than two percent of the supportive services amounts appropriated under section 803(k) of the Act shall be available for supportive services in the event that a demand is made under section 303(c)(1)(D) of the Act (see section IX of these guidelines). Requests to utilize such funds by the PHA must be transmitted to HUD as part of the annual program/budget review. Adjustments only can be made by the PHA during the first six months of the annual budget cycle. These adjustments will be based on written requests in such form as HUD may require. Supportive services funds in the HUD reserve which are not used during the first six months of each annual review cycle shall be used for future supportive services grants.

##### B. HUD Evaluation

HUD intends to perform a thorough, long term evaluation of the Elderly Independence program. To help assure the quality of that evaluation, each PHA shall submit a certification with the application agreeing to cooperate with and provide requested data to the entity responsible for the program evaluation, if requested to do so by HUD.

##### C. Recapture Authority

Any PHA not providing supportive services within 12 months of the effective date of the Elderly Independence demonstration grant award may have its supportive services award terminated and funds recaptured by HUD. In such cases, the PHA will

retain housing assistance funds under the ACC.

##### D. Reports

Each PHA will submit annual and quarterly reports to HUD in such form and timing as HUD may require. These reports will contain such information as the number and types of persons served, the amount and cost of services provided and the source of support for those services, the work load of the PAC and the service coordinator, and other relevant program data. At the end of year 1 of the demonstration, HUD will reassess the need for quarterly reports, and may adjust the reporting frequency as appropriate.

HUD will submit an annual report to the Congress which addresses, at a minimum, the number, race, ethnicity and gender of persons served (as required under Section 808(e)(6) of the Fair Housing Act of 1988 and Section 562 of the Community Development Act of 1987), the types and amounts of the minimum supportive services provided to keep program participants independent, the cost of such services and information regarding other items as required. An evaluation of the program will be developed over time.

##### XII. Budget Submission/Services Costs

Each PHA must submit a supportive services budget for the first year of supportive services delivery, and annually, thereafter, in such form that HUD requests in the application package. The budget for the first year normally will utilize less than 20 percent of the funds potentially available, due to start-up. Any utilization of less than 20 percent of supportive services funds in any year can be carried forward for use in later years. This budget submission is in addition to the budget documents submitted in accordance with Section 8 housing assistance requirements.

For overall budget purposes, HUD has estimated that a full supportive service package could cost as much as \$4,000 a year per person, of which HUD would pay approximately \$1,600. Each applicant should specify their expected annual per person costs and explain how those costs were determined.

##### A. Allowable Costs

1. Allowable costs for the administrative fee and housing assistance payments are subject to the requirements of 24 CFR parts 882 and 887, and other program requirements.

2. Allowable costs for direct provision of supportive services include provision of supportive services noted in section II., above, and others approved by HUD. This includes direct hiring of staff,

including a Service Coordinator, supportive service contracts with third parties, equipment and supplies (including food) necessary to provide services, and operational costs of a transportation service (e.g., mileage, insurance, gasoline and maintenance, driver wages, taxi or bus vouchers).

Allowable costs shall be reasonable, necessary and recognized as expenditures in compliance with the Office of Management and Budget's (OMB) Cost Policies, i.e., OMB Circular A-7, 24 CFR 85.36 and A-128. In-kind resources, per section VIII.3. of these guidelines, must be fully disclosed.

##### B. Non-allowable Costs

1. Section 8 costs are subject to 24 parts CFR 882 or 887.

2. The Elderly Independence demonstration supportive service funds may not be used to cover expenses related to any existing PHA program, service, or activity at the time of application to the Elderly Independence demonstration.

3. Examples of non-allowable costs under the supportive services portion of the program are:

a. Capital funding (such as purchase of a bus or van, buildings, related facilities or land).

b. Administrative costs such as: Annual fiscal review and audit, telephones, postage, travel, professional education, furniture and equipment, or a share of costs charged to the Elderly Independence demonstration for rent/lease, utilities, staff time.

c. Payments to PAC members (other than the Service Coordinator) or third party organizations providing that function, except that staff time supplied for this purpose by third party organizations can be counted as matching funds.

d. Purchase or lease of kitchen, dining room equipment or furnishings directly related to providing meals.

e. Cost of supportive services other than those approved by HUD.

f. Modernization, renovation or new construction of a building or facility.

g. Any cost related to the development of the demonstration application and plan of operations before the effective date of the Elderly Independence demonstration grant award.

h. Ongoing and regular care from doctors and nurses, including administering medication, purchase of medical supplies and medications, or any institutional forms of care.

i. Costs necessary to implement any plan to locate dwelling units in the designated jurisdiction for those frail elderly who either must and/or want to

move in order to participate in the Elderly Independence demonstration.

j. The costs associated with the physical move of any frail elderly person who is moving to a new dwelling unit in order to participate in the Elderly Independence demonstration.

k. Other items as defined in the supportive services grant instrument and OMB Circular A-102.

### XIII. Nondiscrimination and Equal Opportunity

PHAs serving the designated elderly and frail elderly population must comply with the nondiscrimination, equal opportunity, and affirmative outreach requirements as required by 24 CFR parts 882 and 887. It should be noted that Title VIII of the Civil Rights Act of 1968, as amended, is now the "Fair Housing Act."

### XIV. Other Federal Requirements

#### A. OMB Circulars and Administrative Requirements

The policies, guidelines and requirements of OMB Circular No. A-87 and 24 CFR part 85 apply to the acceptance and use of assistance under this program by the PHA. PHAs are also subject to the audit requirements described in 24 CFR part 44 (OMB Circular A-128).

#### B. Drug-Free Workplace

PHAs must certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

#### C. Anti-Lobbying Certification

Section 319 of Pub. L. 101-121 prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). The rule requires applicants, grantees and subgrantees of assistance exceeding \$100,000 in budget authority to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants, among others, if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties

for failure to file the required certification or disclosure.

#### D. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

#### E. Conflict of Interest

In addition to the conflict of interest requirements in OMB Circular A-87 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the PHA and who exercises or has exercised any function or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or any proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure or for one year thereafter. These requirements apply only to the supportive services grants.

### XV. Application Requirements

All applications must contain at least the following information, in such form as HUD may require:

1. An SF-424, Request for Federal Assistance (this is not to be used for intergovernmental review, but for financial tracking purposes).
2. A description of the PHA's past experience in meeting the supportive service needs of the frail elderly, and other relevant experience, such as the ability to design and implement new programs.
3. A description of the size and characteristics of the frail elderly population in that jurisdiction and of their housing and supportive services needs. This description must include:
  - a. An estimate of the number of eligible frail elderly persons on the PHA's Section 8 waiting list and an outreach plan for identifying others, with a commitment to serve those on the waiting list first.
  - b. An estimate of the kind of supportive service needs expected among the population to be served and a description of the services currently available in the community to meet those needs.
4. A description of the proposed method of determining whether a person

qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency) and of selecting frail elderly to participate, once they have completed the Section 8 tenant certification process. This description must include:

a. A commitment to establish a Professional Assessment Committee or utilize a local agency to provide such a service;

b. A description of the assessment and case management process that the PHA will utilize in accepting and for continued acceptance of program participants over time and how this process relates to their housing and tailored supportive service needs. The proposed PAC operational procedures must also include a transition component discussing what arrangements will be made for participants who become too frail to continue their participation in the Elderly Independence demonstration or become well enough to discontinue the services component.

c. Resumes of the proposed PAC members, a job description for the Service Coordinator, the agreement with the third-party agency if the Service Coordinator function is contracted-out, or, if possible, the resume of the individual proposed for hiring as the Service Coordinator by the PHA.

5. A description of the supportive services the PHA proposes to make available to the frail elderly persons to be served, the estimated cost of such services and a description of the resources that are expected to be available to cover the portion of the costs required by sections VIII and IX of these guidelines. This description must include:

a. A supportive services budget for each service and administrative cost related to the supportive services program for year one, and a cost estimate for subsequent years, in such form that HUD may require.

b. A written commitment from the PHA and each supportive service provider to make available all listed resources for the first year of the demonstration and assurances that these resources will be provided for the five years of the Elderly Independence demonstration. The PHA must also include a statement that, in cases where participants are certified to pay for less than 10 percent of the cost of supportive services, the PHA will share in the cost of the difference, up to 50 percent of the shortfall.

c. A statement of qualifications for each service provider proposed. Each supportive service provider shall certify

that the supportive services will be available for the term of the demonstration and provide firm dollar commitments for the first year.

d. An explanation of how the PHA will modify the acquisition of supportive services over time to meet the needs identified by the individual assessments by the PAC or other entity as needed by the participants to remain independent.

e. A plan for the continuation of supportive services for program participants at the end of the demonstration period.

f. An explanation of the process for setting of participant fees and how the PHA will monitor fee collections.

g. A listing of each staff/service function proposed by the PHA for the supportive services component of the Elderly Independence demonstration and a job description of each position.

6. A plan for coordinating both the provision of housing and the provision of supportive services and the means for monitoring that plan.

7. A letter from the Area Agency on Aging (or the State Unit on Aging if that state is not subdivided) stating that the agency was involved in the development of the application and the supportive services plan, and describing the proposed role which the Area Agency will have during the life of the grant, if it is funded. The letter shall also state that the costs of the supportive services are reasonable, that the costs are consistent with other service programs in that jurisdiction, and identify plans for ongoing involvement and for review of program operations at regular intervals.

8. A justification of any geographic area to which the Elderly Independence demonstration may be limited by the PHA.

If the PHA exercises this option, it must state the limits of the service area of the service providers which it proposes to utilize, including provision of supportive services by the PHA, cost efficiency and effectiveness of such supportive service delivery, and include maps with any relevant boundaries.

If the PHA does not exercise the option to limit the size of the geographic area in which the Elderly Independence demonstration will operate, it must clearly state so in the application.

9. A description of the proposed Advisory Committee (if being utilized), its role, function, relation to the PHA and a description of its process for appointing and changing members.

10. Any additional information stipulated in the application package.

11. A Form HUD-52515, application for housing assistance under Section 8 of the 1937 Act, under 24 CFR 882.204 for a maximum of 130 efficiency or one-

bedroom rental certificates or rental vouchers.

#### XVI. Application Processing and Selection

At the time funding is appropriated for this program a Notice of Funds Availability will be published in the *Federal Register* containing the amounts of funds available, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria and the Field Office Review.

##### A. Technical Assistance During the Application Period

HUD will provide limited technical assistance related to the supportive services portion of the application during the application period. HUD Headquarters staff will accept telephone calls to provide advice and guidance to potential applicants on application requirements and program policies. HUD expects that most questions will center around the following items: Matching funds, the assessment and case management process, eligible services, development of services plan and the budget. Call (202) 708-3291 for questions regarding the supportive services portion of the application, or (202) 708-0477 for questions regarding the Section 8 housing assistance portion of the application. (These are not toll-free numbers.) Hearing-impaired individuals should call the TDD number of the Federal Information Relay Service at 1-800-877-TDDY and request to be routed through to either of these numbers.

##### B. Review of Applications

Each Section 8 and supportive services application will be screened for completeness and technical deficiencies prior to rating and ranking.

During the screening process, if HUD determines that an application has technical deficiencies involving items which are not necessary for HUD's evaluation/ranking, the PHA will be given 14 calendar days from written notification to correct the deficiencies. The purpose of this process is to assist applicants in submitting ratable proposals and not to provide for applications to be substantively improved once the application has been submitted.

All screened applications will be reviewed by a Headquarters panel, which includes staff of the Administration on Aging, Department of Health and Human Services.

Field Office staff will also review all applications after initial screening. This review will cover at least: Management

capacity of the PHA to administer the Elderly Independence demonstration and the Section 8 Program, and prior experience in administering and/or coordinating the delivery of supportive services for the frail elderly. Field Office recommendations will be submitted to HUD Headquarters.

Final rating and ranking of the applications will be performed in Washington, DC.

##### C. Selection Criteria

| Criteria  | Maximum |
|---|---------|
|   | score   |
| 1. The demonstrated ability of the PHA to develop and operate the proposed supportive services program in an efficient and effective manner, including the applicant's proposed contract monitoring capability, where appropriate, and including prior experience in serving frail elderly persons.....               | 20      |
| 2. Overall PHA ability to administer the Section 8 rental certificate and rental voucher program, as evidenced by such factors as leasing rates, correct administration of housing quality standards, tenant rent computation, and rent reasonableness requirements. The degree of economic distress in the area..... | 20      |
| 3. The quality of the proposed supportive services program, including the adequacy of the approach to limiting the supportive services provided to each program participant to those minimally necessary to permit the participant to live independently.....   | 20      |
| 4. The extent to which the proposed funding for supportive services is or will be available.....  | 15      |
| 5. The need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served and the extent to which the program would meet the needs of the frail elderly which it proposes to serve.....  | 15      |
| 6. The extent to which the Area Agency/State Agency on Aging is playing an active role in the supportive services program.....  | 10      |
| Total.....  | 100     |

##### D. Final Selection

All applications will be rank-ordered by score.

##### XVII. Announcement of Awards

The Secretary will announce the selection of awards for the Elderly Independence demonstration when the ranking process is completed. The Department will make preliminary reservations of the supportive services funds pending final certification and negotiation of the grants.

PHAs selected to participate in the Elderly Independence demonstration

will receive written notification of HUD's intention to make available Section 8 housing assistance funds and supportive services funds under the Elderly Independence demonstration. These PHAs will be instructed on what negotiations that may be necessary to finalize the award, in such manner and in such time-frame that HUD may require.

The Secretary will also notify the public of all funding decisions made by the Department. The Secretary shall require any State or unit of local government to notify the public of the award or allocation of funding related to the Elderly Independence demonstration. The notification shall include the following elements for each funding decision:

- The name and address of each funding recipient;
- The name or other means of identifying the project, activity, or undertaking for each funding recipient;
- The dollar amount of the funding for each project, activity or undertaking;
- The citation to the statutory, regulatory, or other criteria under which the funding decision was made; and,
- Such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

HUD will also notify all non-selected applicants in writing.

#### XVIII. Grant Agreement

The HUD Grants Officer will enter into the supportive services grant agreement on behalf of HUD with the grantee. HUD will hold the PHA responsible for the overall administration of the Elderly Independence demonstration. The grant agreement will require that the PHA:

- Operate the supportive services component of the Elderly Independence demonstration in accordance with these guidelines and applicable HUD program regulations;
- Assure the effective provision of supportive services to the program participants;
- Conduct an ongoing assessment of the housing assistance and supportive services required by the program participants; and
- Comply with any other such terms and conditions, including data and record keeping and submission of reports, that the Assistant Secretary may establish for the purposes of carrying out an effective Elderly Independence demonstration.

HUD will enforce the obligations of the agreement through such action as may be necessary, including the termination and recapture of supportive services funds awarded under the Elderly Independence demonstration.

#### XIX. Obligation of Funds, Funding Amendments, and Deobligations

Upon approval of PHA applications, HUD will reserve housing assistance

and supportive services funds for the selected PHAs under this demonstration the total five-year demonstration period. These funds are not obligated until the ACC and the grant agreement for supportive service funds are executed.

HUD may increase the amount awarded for supportive services in the initial obligation to meet its share of any shortfall in client fees at the time of the annual program/budget review.

HUD may deobligate all or a portion of the funds approved for supportive services if the proposed housing and supportive services for which funding is approved are not provided within 12 months of execution of the grant award. The supportive services grant award may set forth in detail other circumstances under which funds may be deobligated, and other sanctions imposed, including the recapture of excess funds at the end of the five-year demonstration period.

#### XX. Waiver Authority

The Secretary may waive any requirement of these guidelines that is not required by law, upon a determination of good cause. Each waiver will be in writing, supported by documentation of the pertinent facts and grounds, and signed by the Secretary. The Secretary will publish notice of granted waivers in the Federal Register.

Dated: January 28, 1991.

Jack Kemp,  
Secretary.

[FR Doc. 91-2402 Filed 2-1-91; 8:45 am]

BILLING CODE 4210-32-M

# **Registered Federal Register**

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**Part XV**

## **The President**

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**Executive Order 12748—Providing for  
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# The President

Executive Order 12712 - Provided for  
Federal Pay Administration

Robert A. Taft

# Presidential Documents

Title 3—

Executive Order 12748 of February 1, 1991

The President

## Providing for Federal Pay Administration

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Employees Pay Comparability Act of 1990 (hereinafter "FEPCA"), as incorporated in section 529 of Public Law 101-509, and sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. Annual Adjustments to Pay Schedules.** The following agencies are designated under section 5303(g) of title 5, United States Code, as amended by FEPCA, to prescribe conversion rules for the initial adjustment of rates of pay to be applied during each annual adjustment of pay schedules under section 5303 of title 5, United States Code:

(a) the Office of Personnel Management, for the General Schedule;

(b) the Department of State, for the Foreign Service Schedule; and

(c) the Department of Veterans Affairs, for the Veterans Health Services and Research Administration Schedules.

**Sec. 2. Locality-based Comparability Payments.** (a) The Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management are hereby designated under section 5304(d)(1) of title 5, United States Code, as amended by FEPCA, to serve jointly as the President's agent under section 5304 of title 5, United States Code, and shall be known in this capacity as the President's Pay Agent.

(b) The head of each executive agency employing personnel under a statutory pay system, as defined in section 5302(1) of title 5, United States Code, as amended by FEPCA, shall provide such information and assistance as may be requested by the President's Pay Agent in carrying out the provisions of section 5304 of title 5, United States Code.

**Sec. 3. Special Pay Authority.** (a) The Office of Personnel Management is hereby authorized and designated, pursuant to section 5305(a) of title 5, United States Code, as amended by section 101 of FEPCA, to exercise the authorities of the President under section 5305 of title 5, United States Code, concerning higher rates of pay.

(b) Before exercising the delegated authorities under subsection (a) regarding employees in positions other than those covered by the General Schedule, the Office of Personnel Management shall consult with the head of the agency employing such employees.

**Sec. 4. Previous Order Revoked.** Executive Order No. 11721, as amended, is revoked.

**Sec. 5. Advance Payments for New Appointees.** Section 2(b) of Executive Order No. 10982, as amended, is further amended to read as follows:

"(b) The Office of Personnel Management is hereby designated and empowered to perform the functions conferred upon the President by the provisions of section 5527 of title 5, United States Code, with respect to allotments and assignments authorized by section 5525 of title 5, United States Code, and advance payments to new appointees authorized by section 5524a of title 5, United States Code, as added by section 107(a) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509."

**Sec. 6. Extension of Cash Awards, Recruitment and Relocation Bonuses, and Retention Allowances.** The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under:

(a) section 4505a(d) of title 5, United States Code, as added by section 207(a) of FEPCA, concerning the application of performance-based cash awards to noncovered categories of employees;

(b) section 5753(e) of title 5, United States Code, as added by section 208 of FEPCA, concerning the application of recruitment and relocation bonuses to noncovered categories of employees; and

(c) section 5754(e) of title 5, United States Code, as added by section 208 of FEPCA, concerning the application of retention allowances to noncovered categories of employees.

**Sec. 7. Staffing Differentials.** The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 209 of FEPCA to establish staffing differentials.

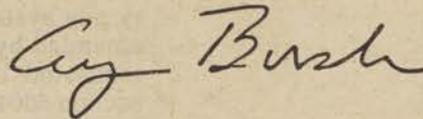
**Sec. 8. Executive Assignment System.** (a) Civil Service Rule 9 (5 CFR Part 9), as established by Executive Order No. 11315, as amended, is revoked.

(b) The Office of Personnel Management shall take such actions as the Office may determine to be necessary to provide for the orderly termination of the Executive Assignment System.

**Sec. 9. Effective Dates.** (a) Except as otherwise provided by Public Law 101-509, the provisions of subchapter I of chapter 53 of title 5, United States Code, as amended by section 101 of FEPCA, and the provisions of sections 1 through 4 of this order shall take effect on February 3, 1991.

(b) Except as otherwise provided by Public Law 101-509, the remaining provisions of FEPCA and of this order shall take effect on May 4, 1991, except that the Office of Personnel Management may establish an earlier effective date, but not earlier than February 3, 1991, for any such provisions with respect to which the Office determines an earlier effective date is appropriate.

THE WHITE HOUSE,  
February 1, 1991.



[FR Doc. 91-2973

Filed 2-1-91; 4:12 pm]

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# Reader Aids

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| Title                                      | Price   | Revision Date             |
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| 1, 2 (2 Reserved)                          | \$11.00 | Jan. 1, 1990              |
| 3 (1989 Compilation and Parts 100 and 101) | 11.00   | <sup>1</sup> Jan. 1, 1990 |
| 4  | 16.00   | Jan. 1, 1990              |
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| 1-699                                      | 15.00   | Jan. 1, 1990              |
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| 0-26                                       | 15.00   | Jan. 1, 1990              |
| 27-45                                      | 12.00   | Jan. 1, 1990              |
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| 300-399                                    | 12.00   | Jan. 1, 1990              |
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| 1000-1059                                  | 16.00   | Jan. 1, 1990              |
| 1060-1119                                  | 13.00   | Jan. 1, 1990              |
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| <b>12 Parts:</b>                           |         |                           |
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| <b>17 Parts:</b> |       |                           |
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| 1-199            | 28.00 | Apr. 1, 1990              |
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| 1-399            | 14.00 | Apr. 1, 1990              |
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| <b>21 Parts:</b> |       |                           |
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| 800-1299         | 18.00 | Apr. 1, 1990              |
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| 200-499          | 30.00 | Apr. 1, 1990              |
| 500-699          | 13.00 | Apr. 1, 1990              |
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| 200-End          | 14.00 | Apr. 1, 1990              |
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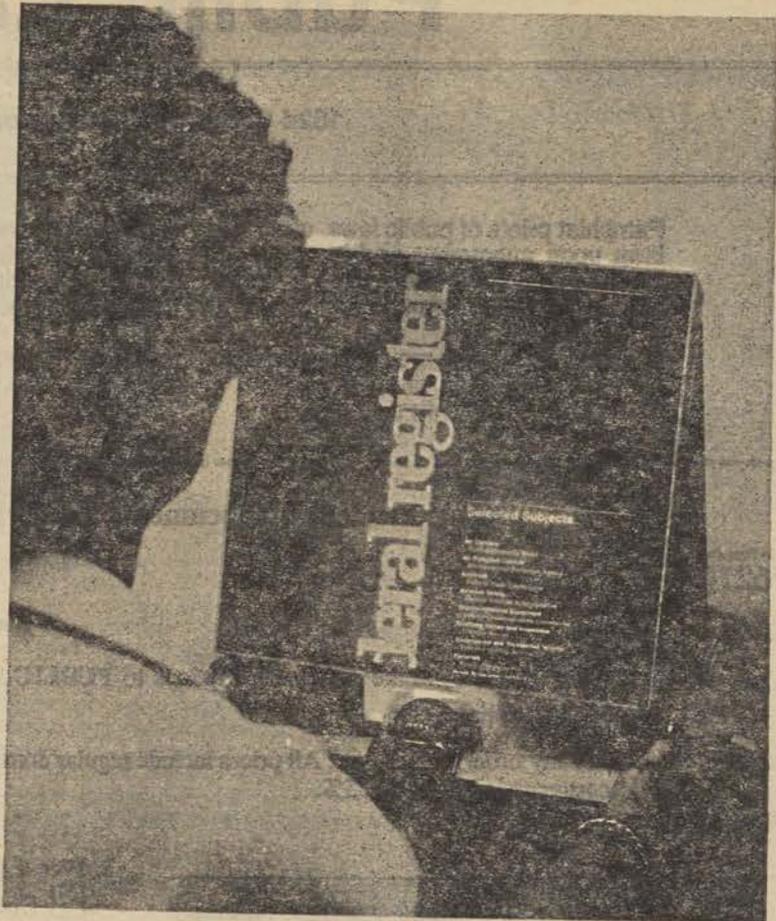
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